



COMPLIANCE REVIEW REPORT

DEPARTMENT OF REAL ESTATE

Compliance Review Unit
State Personnel Board
July 17, 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 Real Estate (DRE) 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
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Technical	Department Did Not Provide Benefit Information in Accordance with Civil Service Law
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time ¹
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers ²
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment ³
Compensation and Pay	In Compliance	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

¹ Repeat finding. The March 2, 2021, the DRE's Compliance Review Report identified 2 out of 10 NOPA's missing from the personnel files.

² Repeat finding. The May 2, 2021, the DRE's Compliance Review Report identified 97 of 113 existing filers did not receive ethics training.

³ Repeat finding. The March 2, 2021, the DRE's Compliance Review Report identified 1 incorrect salary determination of the 9 reviewed.

Area	Severity	Finding
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees ⁴

BACKGROUND

The DRE is responsible for licensing and regulating real estate agents and individuals performing residential mortgage loan brokerage activities. The DRE also authorizes the sale or lease of subdivision interests in California through the issuance of a public report pursuant to the Subdivided Lands Act and oversees the Vacation Ownership and Time-Share Act. The DRE is headquartered in Sacramento and has district offices in Oakland, Fresno, Los Angeles, and San Diego.

DRE's mission is to safeguard and promote the public interests in real estate matters through licensure, regulation, education, and enforcement. The DRE is an effective consumer advocate by monitoring and regulating industry practices while promoting public awareness. Additionally, it is a customer-focused department providing timely and efficient services to licensees, subdividers and consumers.

⁴ Repeat finding. The March 2, 2021, the DRE's Compliance Review Report identified all 25 employees reviewed did not receive annual performance appraisals.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DRE's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the DRE'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 DRE'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 DRE provided, which included examination plans, examination bulletins, job analyses, and scoring results. The DRE did not conduct any permanent withhold actions during the compliance review period.

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

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

The review of the DRE's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal

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

discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

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

The DRE'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 Career Executive Appointments (CEAs) were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

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

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

On May 18, 2023, an exit conference was held with the DRE to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DRE's written response on May 25, 2023, which is attached to this final compliance review report.

⁶If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

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 2, 2021, through August 1, 2022, the DRE conducted one examination. The CRU reviewed the examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Chief Information Officer	CEA	Statement of Qualifications ⁷	1/31/22	36

⁷ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

IN COMPLIANCE	FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU reviewed one open examination which the DRE administered to create eligible lists from which to make an appointment. The DRE published and distributed examination bulletins containing the required information for all examinations. Applications received by the DRE were 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 all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examination that the DRE conducted 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, 2021, through June 30, 2022, the DRE made 69 appointments. The CRU reviewed 21 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Accountant Trainee	Certification List	Limited Term	Full Time	1
Associate Governmental Program Analyst (AGPA)	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Information Technology Supervisor II	Certification List	Permanent	Full Time	1
Managing Deputy Commissioner II	Certification List	Permanent	Full Time	1
Office Assistant (General)	Certification List	Permanent	Full Time	1
Program Technician (PT) II	Certification List	Permanent	Full Time	2
Real Estate Counsel II	Certification List	Permanent	Full Time	1
Special Investigator	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Supervising Special Investigator I (Non-Peace Officer)	Certification List	Permanent	Full Time	1
Pension Program Manager II	Training & Development	Permanent	Full Time	1
AGPA	Transfer	Permanent	Full Time	2
Information Technology Supervisor II	Transfer	Permanent	Full Time	1
PT II	Transfer	Limited Term	Full Time	1
PT II	Transfer	Permanent	Full Time	1
Special Investigator	Transfer	Permanent	Full Time	1
Supervising Special Investigator (Non-Peace Officer)	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED
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Summary: The DRE did not provide 2 probationary reports of performance for 1 of the 21 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
AGPA	Transfer	1	2

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: Managers and supervisors are not properly trained on the importance of Government Code section 19171 and the California Code of Regulations, title 2, section 599.795.

Corrective Action: The DRE asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DRE must submit to the SPB documentation which demonstrates the corrections the department will implement to ensure conformity with Government Code section 19172.

SEVERITY: TECHNICAL	FINDING NO. 3 DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION IN ACCORDANCE WITH CIVIL SERVICE LAW
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Summary: The DRE did not provide 3 explanations of benefits prior to acceptance of appointment out of the 21 appointments reviewed by the CRU.

And The DRE did not memorialize that the applicant received an explanation of benefits, prior to appointment, in a formal offer of employment 3 times out of the 21 appointments reviewed by the CRU.

Criteria: An appointing power, before offering employment to an applicant, shall provide the applicant, in writing, with an explanation of benefits that accompany state service. These documents shall include a summary of the applicable civil service position with salary ranges and steps within them, as well as information on benefits afforded by membership in the Public Employees' Retirement System and benefits and protections provided to public employees by the State Civil Service Act. (Gov. Code, § 19057.2.)

Severity: Technical. An applicant is entitled to have all the information regarding benefits relating to their potential employment prior to deciding whether to accept or decline the appointment.

Cause: The DRE was not providing an official job offer or explanation of benefits to employees who transferred internally. Additionally, another employee was not provided an offer of employment and benefits in a timely manner.

Corrective Action: Within 90 days of the date of this report, the DRE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the explanation of benefits requirements of Government Code section 19057.2. Copies of relevant documentation (including a template letter) demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: TECHNICAL	FINDING NO. 4 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME
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Summary: Of the 21 appointments reviewed, the DRE did not retain 3 NOPAs. This is the second consecutive time this has been a finding for the DRE.

Criteria: As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

Severity: Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The DRE did not request a NOPA for one employee as they were hired and separated on the same day. Additionally, staff were purging older NOPAs whenever a new NOPA was generated.

Corrective Action: The DRE asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DRE must submit to the SPB documentation which demonstrates the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26.

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. 5 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 DRE’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 DRE. The DRE 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 2, 2021, through August 1, 2022, the DRE had three PSC's that were in effect. The CRU reviewed all three of these, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
PSI	Exam Fee Study	7/1/21 – 5/1/22	\$200,000	Yes	Yes
PSI	Proctor Services	3/15/22 – 3/14/23	\$5,600,000	Yes	Yes
Unleashing Leaders	Leadership Services	1/15/21 – 12/31/22	\$228,000	Yes	Yes

IN COMPLIANCE	FINDING NO. 6 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS
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The total dollar amount of all the PSC's reviewed was \$6,028,000. It was beyond the scope of the review to make conclusions as to whether DRE justifications for the contract were legally sufficient. For all PSC's reviewed, the DRE provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, DRE complied with proper notification to all organizations that represent state employees who perform or could perform the type or work contracted as required by California Code of Regulations section 547.60.2. Accordingly, the DRE PSC's complied with civil service laws and board rules.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

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.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biennial basis. (*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 DRE’s mandated training program that was in effect during the compliance review period, September 1, 2020, through August 1, 2022. The DRE’s supervisory and sexual harassment prevention trainings were found to be in compliance, while the DRE’s ethics training was found to be out of compliance.

SEVERITY: VERY SERIOUS	FINDING NO. 7 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: While the DRE did provide ethics training to all 27 new filers within 6 months of their appointment, it did not provide ethics training to 7 of

61 existing filers. This is the second consecutive time this has been a finding for the DRE.

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 DRE had gaps in its internal procedures which failed to ensure that all training certificates were retained in an electronic storage system.

Corrective Action: The DRE asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DRE must submit to the SPB documentation which demonstrates the corrections the department will implement to ensure conformity with Government Code section 11146.3.

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.

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).

During the period under review, October 1, 2021, through June 30, 2022, the DRE made 69 appointments. The CRU reviewed nine of those appointments to determine if the DRE applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
AGPA	Certification List	Permanent	Full Time	\$5,383
Information Technology Specialist I	Certification List	Permanent	Full Time	\$7,021
Information Technology Supervisor II	Certification List	Permanent	Full Time	\$9,878
Managing Deputy Commissioner I	Certification List	Permanent	Full Time	\$8,144
PT II	Certification List	Permanent	Full Time	\$3,452
PT II	Certification List	Permanent	Full Time	\$3,291
Supervising Special Investigator I (Non-Peace Officer)	Certification List	Permanent	Full Time	\$8,247
AGPA	Transfer	Permanent	Full Time	\$5,383
Special Investigator	Transfer	Permanent	Full Time	\$7,854

SEVERITY: VERY SERIOUS	FINDING NO. 9 INCORRECT APPLICATION OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT
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Summary: The CRU found two errors in the DRE's determination of employee compensation. This is the second consecutive time this has been a finding for the DRE.

Classification	Description of Findings	Criteria
Managing Deputy Commissioner II	Incorrect salary determination resulting in the employee being undercompensated.	Cal. Code Regs., tit. 2, § 599.675
PT II	Incorrect salary determination and merit salary adjustment resulting in the employee being undercompensated.	Cal. Code Regs., tit. 2, §§ 599.675 and 599.683

Criteria: Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state

civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

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

Cause: A Personnel Specialist, new to state service, made two keying errors.

Corrective Action: The DRE asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DRE must submit to the SPB documentation which demonstrates the corrections the department will implement to ensure that employees are compensated correctly. The DRE must establish an audit system to correct current compensation transactions as well as future transactions.

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, 2021, through June 30, 2022, the DRE issued bilingual pay to four employees. The CRU reviewed all four of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Office Assistant (Typing)	R07	Full Time	1
Special Investigator	R07	Full Time	2
Supervising Special Investigator I	S07	Full Time	1

IN COMPLIANCE	FINDING NO. 10	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.

Out-of-Class Assignments and Pay

For excluded⁹ 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, 2021, through June 30, 2022, the DRE issued OOC pay to four employees. The CRU reviewed all four of these OOC assignments to

⁹ “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.

ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Personnel Analyst	R01	Staff Services Manager (SSM) I (Supervisory)	10/1/21 – 12/1/21
PT II	R04	Supervising Program Technician II (SPT II)	5/1/22 – 5/31/22
PT II	R04	SPT II	2/1/22 – 3/31/22
PT II	R04	SPT II	4/1/22 – 4/30/22

IN COMPLIANCE	FINDING NO. 11	OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the OOC pay assignments that the DRE authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all the working days of a month. When counting 189 days, every day worked, including partial days¹⁰ worked and paid absences¹¹, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12

¹⁰ For example, two hours or ten hours count as one day.

¹¹ For example, vacation, sick leave, compensating time off, etc.

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

Classification	Tenure	Time Frame	Hours Worked
AGPA	Retired Annuitant	7/1/21 – 6/30/22	952
Deputy Commissioner	Retired Annuitant	7/1/21 – 6/30/22	767
Information Technology Manager I	Retired Annuitant	7/1/21 – 6/30/22	604
Office Technician (General)	Retired Annuitant	7/1/21 – 6/30/22	300.25
Senior Personnel Specialist	Retired Annuitant	7/1/21 – 6/30/22	958.5
SSM III	Retired Annuitant	7/1/21 – 6/30/22	220.5

IN COMPLIANCE	FINDING NO. 12	POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND 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 DRE 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, 2021, through May 31, 2022, the DRE authorized one ATO transaction. The CRU reviewed the ATO transaction to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Special Investigator	6/1/21 – 9/10/21	72 Days

IN COMPLIANCE	FINDING NO. 13	ADMINISTRATIVE TIME OFF AUTHORIZATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The DRE 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, 2022, through May 31, 2022, the DRE reported 22 units comprised of 345 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
March 2022	340	10	10	0
March 2022	520	7	7	0
April 2022	330	30	30	0
April 2022	530	15	15	0
May 2022	120	13	13	0
May 2022	220	20	20	0

IN COMPLIANCE	FINDING NO. 14	LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DRE 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.¹² (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 employees¹³ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, October 1, 2021, through June 30, 2022, the DRE had six employees with non-qualifying pay period transactions. The CRU reviewed five transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	5

¹² 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.

¹³ As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

IN COMPLIANCE	FINDING NO. 15	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU determined that the DRE 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. 16	NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the DRE's commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the DRE'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 DRE did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 17	WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU verified that the DRE 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 DRE 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 57 permanent DRE 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. 18	PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The DRE did not provide annual performance appraisals to 28 of 57 employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the DRE.

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: Managers and supervisors are not properly trained on the importance of Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

Corrective Action: The DRE asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DRE must submit to the SPB documentation which demonstrates 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.

DEPARTMENTAL RESPONSE

The DRE’s departmental response is attached as Attachment 1.

SPB REPLY

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