COMPLIANCE REVIEW REPORT

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

Compliance Review Unit
State Personnel Board
April 8, 2020

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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 Alcoholic Beverage Control Appeals Board (Appeals Board) 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	Finding
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Officer's Duty Statement Does Not Reflect EEO Duties
Mandated Training	Ethics Training Was Not Provided for All Filers
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records
Policy	Nepotism Policy Needs to be Updated to Comply with Statewide Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The Appeals Board provides quasi-judicial administrative review of decisions of the Department of Alcoholic Beverage Control (ABC). The questions that may be considered by the Appeals Board are limited by the California Constitution and by statute. (See the California Constitution, article XX, § 22 and Business and Professions Code §§ 23084 and 23085.)

The Appeals Board determines appeals solely on the record of the ABC and any briefs filed by the parties. No additional evidence may be received by the Appeals Board. However, the parties to appeals may present oral argument during the Appeals Board's monthly hearings.

The Appeals Board issues written decisions with orders affirming, reversing, and/or remanding the ABC's decisions. Judicial review of the Appeals Board's order may be obtained by filing a petition for writ of review with the California Supreme Court or the Court of Appeal. (See Business and Professions Code §§ 23090 – 23090.7.)

The Department of General Services (DGS) performs human resources functions for the Appeals Board.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the Appeals Board's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes[1]. The primary objective of the review was to determine if the Appeals Board's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The Appeals Board did not conduct any examinations or permanent withhold actions during the compliance review period.

[1] 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 Appeals Board's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the Appeals Board 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 Appeals Board did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the Appeals Board did not make any additional appointments during the compliance review period.

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

The review of the Appeals Board'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 Appeals Board did not execute any PSC's during the compliance review period.

The Appeals Board's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided sexual harassment prevention training within statutory timelines. At the time of review, the Appeals Board did not have any supervisors who required basic supervisory training.[2]

The Appeals Board did not have any employees whose current annual leave, or vacation leave credits, exceeded established limits during the compliance review period.

[2] The Appeals Board did not report any new supervisors during this review period.

The CRU reviewed the Appeals Board's Leave Activity and Correction Certification forms to verify that the [Department Acronym] created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the Appeals Board'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 Appeals Board's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with vacation/sick leave and/or annual leave accruals were correct. Further, the CRU reviewed a selection of Appeals Board's 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 Appeals Board's policies and processes concerning nepotism and workers' compensation. The Appeals Board did not report any employees were due performance appraisals during the review period.[3] The review was limited to whether the Appeals Board's policies and processes adhered to procedural requirements.

On March 6, 2020, an exit conference was held with the Appeals Board to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the Appeals Board's written response on March 20, 2020, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Appointments

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

[3] The Appeals Board has four permanent, full-time employees (excluding the Executive Officer). During the review period, three employees were on probation and one had completed probation within the year; therefore, annual performance appraisals were not required for these employees.

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, August 1, 2018, through July 31, 2019, the Appeals Board made two appointments. The CRU reviewed those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Attorney	Certification List	Permanent	Full time	1
Staff Services Analyst	Transfer	Permanent	Full time	1

FINDING NO. 1 – Appointments Complied with Civil Service Laws and Board Rules

The Appeals Board measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For the list appointment reviewed, the Appeals Board 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 the Appeals Board's appointment 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 DGS on behalf of the Appeals Board verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the Appeals Board initiated during the compliance review period. Accordingly, the CRU found that the Appeals Board'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).)

FINDING NO. 2 – Equal Employment Opportunity Officer's Duty Statement Does Not Reflect EEO Duties

Summary: The Appeals Board's Executive Officer serves as the EEO Officer. Although the Appeals Board's EEO program outlines the roles and responsibilities of the EEO Officer, the Executive Officer's Duty Statement provided by Appeals Board does not contain EEO Officer related duties.

Criteria: 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).) The EEO Officer shall, among other duties, analyze and report on appointments of employees, bring issues of concern regarding EEO to the appointing power and recommend appropriate action, and perform other duties necessary for the effective implementation of the agency EEO plans. (Gov. Code, § 19795, subd. (a).)

Severity: Very Serious. The EEO Officer is responsible for developing, implementing, coordinating, and monitoring an effective EEO program. Due to the substantial responsibilities held by each department's EEO Officer, it is essential that each department,

dedicate sufficient staff resources to successfully maintain an effective EEO program.

Cause: Due to staff turnover, the Executive Officer's duty statement did not reflect EEO duties.

Corrective Action: The Appeals Board submitted the current Executive Officer's duty statement which includes EEO Officer duties. Therefore, no further action is required at this time.

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.)

Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

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 Appeals Board's mandated training program that was in effect during the compliance review period, August 1, 2017, through July 31, 2019. The Appeals Board's sexual harassment prevention training was found to be in compliance, while the Appeals Board's ethics training was found to be out of compliance.

FINDING NO. 3 – Ethics Training Was Not Provided for All Filers

Summary: The Appeals Board did not provide ethics training to its one existing filer.[4]

Criteria: 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 Appeals Board does not have an automated training system for training. Also, there were insufficient internal procedures to ensure all existing ethics filers completed training timely.

Corrective Action: The Appeals Board has submitted to CRU an ethics training policy and spreadsheet to track ethics training requirements to ensure compliance with Government Code section 11146.3. Additionally, subsequent to the review, the one ethics filer completed ethics training. Therefore, no further action is required at this time.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate[5] 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.

[4] The Appeals Board did not appoint any new supervisors during the review period.
[5] "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

During the period under review, August 1, 2018, through July 31, 2019, the Appeals Board made two appointments. The CRU reviewed those appointments to determine if the DGS, on behalf of the Appeals Board, applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Attorney	Certification List	Permanent	Full time	$7,609
Staff Services Analyst	Transfer	Permanent	Full time	$3,228

FINDING NO. 4 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The DGS, on behalf of the Appeals Board, 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, August 1, 2018, through July 31, 2019, one of the Appeals Board's employees made an alternate range movement within a classification. The CRU reviewed the alternate range movement to determine if the Appeals Board applied salary regulations accurately and correctly processed each employee's compensation, which is listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Student Assistant	Range B	Range C	Intermittent	$2,337

FINDING NO. 5 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU determined that the alternate range movements the DGS, on behalf of the Appeals Board, made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Out-of-Class Assignments and Pay

For excluded[6] 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 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, May 1, 2018, through April 30, 2019, the Appeals Board issued OOC pay to one employee. The CRU reviewed this OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. The OOC assignment is listed below:

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

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Supervising Attorney	S02	Executive Officer	2/25/2019 – 4/30/2019

FINDING NO. 6 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the OOC pay assignment that the DGS, on behalf of the Appeals Board, authorized during the compliance review period. OOC pay was issued appropriately to the employee 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 in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days[7] worked and paid absences, [8] is 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-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

[7] For example, two hours or ten hours counts as one day.
[8] For example, vacation, sick leave, compensating time off, etc.

calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the Appeals Board had one employee whose hours were tracked. The CRU reviewed that positive paid appointment to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Time Base	Time Frame	Time Worked
Student Assistant	Intermittent	10/31/2018 – 7/30/2019	1039 hours

FINDING NO. 7 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the time worked for the one employee whose hours were tracked during the compliance review period. The DGS, on behalf of the Appeals Board, provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. *(Ibid.)* If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. *(Ibid.)* Attendance records shall be corrected by the pay period following the pay period in which the error occurred. *(Ibid.)* Accurate and timely attendance reporting is required of all departments and is subject to audit. *(Ibid.)*

During the period under review, February 1, 2019, through April 30, 2019, the DGS, on behalf of the Appeals Board, reported one unit comprised of five or six active employees (depending on the month.) 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
February 2019	315	6	6	0
March 2019	315	5	5	0
April 2019	315	5	5	0

FINDING NO. 8 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The DGS, on behalf of the Appeals Board, failed to provide completed Leave Activity and Correction Certification forms for the February, March and April 2019 pay periods.

Criteria: Departments are responsible for maintaining accurate and timely leave accounting records for their employees. (Cal. Code Regs., tit. 2, § 599.665.) Departments shall identify and record all errors found using a Leave Activity and Correction form. (Human Resources Manual Section 2101.) Furthermore, departments shall certify that all leave records for the unit/pay period identified on the certification

form have been reviewed and all leave errors identified have been corrected. *(Ibid.)*

Severity: Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: The Appeals Board contracts with the Department of General Services (DGS) for this HR function. The DGS acknowledges it was not using the Leave Activity and Correction Certification Forms to audit leave records as required.

Corrective Action: Within 90 days of the date of this report, the Appeals Board must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable regulation and policy relative to leave balances. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. *(Ibid.)* Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. *(Ibid.)* Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. *(Ibid.)* In addition, there may be personal relationships beyond this general definition that could be subject to these policies. *(Ibid.)* All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. *(Ibid.)*

FINDING NO. 9 – Nepotism Policy Needs to be Updated to Comply with Statewide Policy

Summary: The Appeals Board's nepotism policy did not contain the following components, as required by Human Resources Manual section 1204:

1. The mention of merit as the basis of the hiring system and how nepotism is antithetical to the merit principle.

2. Guidelines for addressing instances when a personal relationship arises during employment and how the department will address a personal relationship in violation of the policy (e.g., which employee will be transferred or reassigned and the process in carrying out that transfer or reassignment).

Criteria: Departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit. (Human Resources Manual Section 1204.) Departments should review their policies to determine if there is any need to update their statements or make them more specific to the needs of their organizations. A nepotism policy should be comprised of specific and sufficient components intended to prevent favoritism or bias based on a personal relationship from unduly influencing employment decisions as outlined in the Human Resources Manual Section 1204.

Severity: Very Serious. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy and disseminating it to all staff is the basis for achieving these ends.

Cause: The Appeals Board's nepotism policy did not address all of the points in Human Resources Manual Section 1204.

Action: Subsequently, the Appeals Board updated its nepotism policy in accordance with HR Manual Section 1204, and has provided a copy to CRU. Therefore, no further action is required.

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 subds. (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 Appeals Board did not employ volunteers during the compliance review period.

FINDING NO. 10 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the Appeals Board provides notice to their employees to inform them of their rights and responsibilities under CA Workers' Compensation Law. Furthermore, the CRU verified that when the Appeals Board received worker's compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

DEPARTMENTAL RESPONSE

The Appeals Board's response is attached as Attachment 1.

SPB REPLY

Based upon the Appeals Board's written response, the Appeals Board 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.

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March 20, 2020

Ms. Suzanne M. Ambrose
Executive Director
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Subject: Alcoholic Beverage Control Appeals Board's response to draft State Personnel Board Compliance Review Report

Dear Ms. Ambrose,

This letter is in response to the draft State Personnel Board (SPB) Compliance Review Report submitted to the Alcoholic Beverage Control Appeals Board (ABC AB). ABC AB has reviewed the report and prepared a cause and action plan for each finding.

ABC AB takes these compliance issues seriously and has considered the findings identified in the Compliance Review Report and started all necessary corrective actions to bring ABC AB into compliance.

FINDING NO. 2 – Equal Employment Opportunity Officer's Duty Statement Does Not Reflect EEO Duties

Cause: ABC AB acknowledges that due to staff turnover, the Executive Officer's duty statement did not reflect EEO duties.

Action: As of February 2020, the Executive Officer's duty statement reflects EEO duties.

FINDING NO. 3 – Ethics Training Was Not Provided for All Filers

Cause: ABC AB acknowledges this finding. ABC AB does not have an automated tracking system for training. It had been the responsibility of the employee's direct supervisor to track training completion which resulted in one employee out of compliance. Due to manual process and insufficient internal procedures, the training was not competed.

Action: ABC AB recognizes the importance of compliance with mandatory training requirements. The Board has created an ethics training policy and updated our tracking system and notification procedures to ensure all mandated training is tracked and completed within the required timeframes. All ethics filers have been notified of any overdue status and the Board has achieved a compliance rate of 100 percent as of September 2019.

FINDING NO. 8 – Leave Activity and Correction Certification Forms Were Not Completed for All Leave Records Reviewed

Cause: ABC AB contracts with the Department of General Services (DGS) for this function and ABC AB has no oversight to control how DGS uses Leave Activity and Correction Certification Forms. DGS acknowledges that it was not using the Leave Activity and Correction Certification Forms for all leave records reviewed as required.

Action: Per DGS, they are creating a workgroup to address this issue and create appropriate implementation procedures in an effort to comply with PML 2015-007.

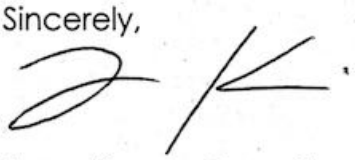
FINDING NO. 9 – Nepotism Policy Needs to be Updated to Comply with Statewide Policy

Cause: ABC AB acknowledges that the previous nepotism policy did not address all points suggested by CalHR.

Action: ABC AB created a revised anti-nepotism policy that includes additional components outlined in CalHR's statewide guidance on nepotism policies.

ABC AB thanks you for the opportunity to respond to the draft Compliance Review Report. If you have any questions, please contact me at (916) 445-4005 or taryn.kinney@abcappeals.ca.gov.

Sincerely,



Taryn Kinney, Executive Officer
Alcoholic Beverage Control Appeals Board

cc: Amy Applegate, Personnel Officer, OHR, DGS
Estella Ceja, SSM II, Personnel Transactions Unit, OHR, DGS