



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA ENERGY COMMISSION**

Compliance Review Unit  
State Personnel Board  
May 17, 2019

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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.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, 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.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Energy Commission (CEC)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Probationary Evaluations Were Not Timely
Appointments	Job Announcement Was Not Advertised for the Minimum Period
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Appointments	Unlawful Appointment Investigation Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Equal Employment Opportunity	Equal Employment Opportunity Officer Does Not Report Directly to the Head of the Agency
Equal Employment Opportunity	Equal Employment Opportunity Officer Also Serves As the Personnel Officer at a State Agency with More Than 500 Employees
Personal Services Contracts	Unions Were Not Notified of Personal Services Contract
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors

<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Area	Finding
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations 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	Actual Time Worked (ATW) Employee Attendance Record Was Not Properly Documented
Leave	Administrative Time Off (ATO) Was Not Properly Documented
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed
Leave	Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Department Does Not Maintain an Updated Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and 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 CEC was established in 1974 by the Warren-Alquist Act. Governor Edmund G. Brown, Jr. appointed the first five commissioners in 1975. As the state's primary energy policy and planning agency, the CEC plays a critical role in creating the energy system of the future—one that is clean, modern, and ensures the fifth largest economy in the world continues to thrive and plays a key role in implementing and crafting policies and programs to create a low-carbon economy. In addition, the CEC is helping create the energy system of California's future through activities such as: planning and policy development, setting renewable energy growth goals, energy efficiency, energy innovation and emergency response strategy. The CEC has saved consumers more than \$110 billion in utility bills by adopting and implementing cost-effective appliance and building energy efficiency standards.

The CEC has five commissioners appointed by the Governor and confirmed by the Senate. Commissioners serve staggered five-year terms. The Governor also designates a chair as the primary agency lead. The CEC employs approximately 600 employees and is comprised of seven large divisions including, Administrative Services, Siting Transmission, and Environmental Protection, Efficiency, Renewable Energy, Research & Development, Fuels & Transportation, and Energy Assessments Division.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CEC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine CEC 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 CEC's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CEC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed

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

the CEC's Permanent Withhold Actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and Withhold letters.

A cross-section of the CEC'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 CEC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CRU also reviewed the CEC's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations.

The CEC's appointments were also selected for review to ensure the CEC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CEC 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: hiring above minimum (HAM) requests, bilingual pay, monthly pay differentials, and out-of-class assignments.

During the compliance review period, the CEC did not issue red circle rate requests and arduous pay.

The review of the CEC'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 CEC's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CEC's justifications for the contracts were legally sufficient. The review was limited to whether the CEC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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<sup>3</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

The CEC'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 supervisory training and sexual harassment prevention training within statutory timelines.

The CRU also identified the CEC's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the CEC to provide a copy of their leave reduction policy.

The CRU reviewed the CEC's Leave Activity and Correction Certification forms to verify that the CEC 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 CEC'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 CEC'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 CEC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of CEC employees tracked by actual time worked (ATW) during the compliance review period in order to ensure that ATW was appropriately utilized.

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

The CEC declined to have an exit conference. The CRU received and carefully reviewed the CEC's written response on May 10, 2019, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form

of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) 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 in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, December 1, 2017 through August 31, 2018, the CEC conducted 51 examinations. The CRU reviewed 12 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Associate Energy Specialist (Efficiency)	Open	Training and Experience (T&E) <sup>4</sup>	12/15/17	7
Associate Energy Specialist-Technology Evaluation and Development (TED)	Open	T&E	6/15/18	5
Business Service Officer I (Specialist)	Open	Education and Experience <sup>5</sup>	2/23/18	3

<sup>4</sup> The Training and Experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

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

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA A, Assistant Executive Director	CEA	Statement of Qualifications (SOQ) <sup>6</sup>	2/21/18	13
CEA A, Special Advisor to a Commissioner	CEA	SOQ	1/3/18	11
CEA B, Deputy Director, Renewable Energy Division	CEA	SOQ	1/22/18	19
Electric Generation System Specialist II	Open	SOQ	12/31/17	5
Electric Generation System Specialist III	Open	SOQ	12/31/17	5
Energy Analyst	Open	Written <sup>7</sup>	1/4/18	118
Energy Resources Specialist III (Managerial)	Open	T&E	12/15/17	4
Energy Resources Specialist III (Supervisory)	Open	T&E	8/15/18	6
Planner I (Energy Facility Siting)	Open	T&E	3/15/18	2

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

The CRU reviewed 12 open examinations which the CEC administered in order to create eligible lists from which to make appointments. The CEC published and distributed examination bulletins containing the required information for all examinations. Applications received by the CEC were accepted prior to the final filing date. Applicants

<sup>6</sup> In a Statement of Qualifications (SOQ's) 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.

<sup>7</sup> A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

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 examinations that the CEC conducted during the compliance review period. It should be noted that although the CRU found no deficiencies in its sampling of examinations during our standard compliance review, a separate special investigation during the same time period found that the CEC improperly conducted the Energy Commission Specialist (TED) series examinations based upon the utilization of flawed job analysis methodology and reporting. The CEC has since corrected the issue by revising the job analysis methodology to comport with standard practices.

**Permanent Withhold Actions**

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria (Gov. Code, § 18935 and CalHR Withhold Delegation Memo.) Permanent appointments and promotions within the state civil service system are merit-based, ascertained by a competitive examination process. Once a candidate has obtained list eligibility, a department may discover information pertaining to that eligible which raises concerns regarding his/her eligibility or suitability for employment with the state. A permanent withhold action is valid for the duration of the eligible’s list eligibility. As of February 12, 2013, departments are required to maintain a separate file for each withhold action and the file should include a copy of the withhold notification letter sent to the eligible, as well as all supporting documentation which form the basis of the withhold action (CalHR Withhold Delegation Memo).

During the review period, the CEC conducted 34 permanent withhold actions. The CRU reviewed 18 of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Associate Energy Specialist (TED)	5ERAC01	4/1/15	4/1/16	Failed to meet Minimum Qualifications (MQs)
Associate Energy Specialist (TED)	5ERAC01	4/1/15	4/1/16	Failed to meet MQs
Associate Energy Specialist (TED)	5ERAC01	4/10/18	4/10/19	Failed to meet MQs

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Associate Governmental Program Analyst	9PB04	6/7/18	6/7/19	Failed to meet MQs
Energy Commission Specialist I (TED)	7PB2601	1/5/18	1/5/19	Failed to meet MQs
Energy Commission Specialist I (TED)	7PB2601	1/7/18	1/7/19	Failed to meet MQs
Energy Commission Specialist I (TED)	7PB2601	6/28/18	6/28/19	Failed to meet MQs
Energy Commission Specialist II (TED)	7PB2602	1/31/18	1/31/19	Failed to meet MQs
Energy Commission Specialist II (TED)	7PB2602	7/11/18	7/11/19	Failed to meet MQs
Energy Commission Specialist II (TED)	7PB2602	11/20/17	11/20/18	Failed to meet MQs
Energy Commission Specialist II (TED)	7PB2602	3/7/18	3/7/19	Failed to meet MQs
Energy Commission Specialist II (TED)	7PB2602	10/16/17	10/16/18	Failed to meet MQs
Energy Commission Specialist III (TED)	7PB26	7/15/18	7/15/19	Failed to meet MQs

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Office Technician (Typing)	4PB2402	6/28/18	6/28/19	Failed to meet MQs
Office Technician (Typing)	4PB2402	4/3/17	4/3/19	Failed to meet MQs
Office Technician (Typing)	4PB2402	1/11/18	1/11/20	Failed to meet MQs
Office Technician (Typing)	4PB2402	12/27/17	12/27/19	Failed to meet MQs
Office Technician (Typing)	4PB2402	12/13/17	12/13/19	Failed to meet MQs

**FINDING NO. 2 – Permanent Withhold Actions Complied with Civil Service Laws and Board Rules**

The CRU reviewed 18 permanent withhold actions. The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

**Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the period under review, November 1, 2017 through July 31, 2018, the CEC made 166 appointments. The CRU reviewed 35 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Energy Specialist (TED)	Certification List	Permanent	Full Time	1
Air Pollution Specialist	Certification List	Permanent	Full Time	1
Associate Energy Specialist (Efficiency)	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Electric Generation System Specialist I	Certification List	Permanent	Full Time	3
Electric Generation System Specialist III	Certification List	Permanent	Full Time	1
Energy Analyst	Certification List	Permanent	Full Time	1
Energy Commission Specialist I (TED)	Certification List	Permanent	Full Time	1
Energy Resources Specialist III (Managerial)	Certification List	Permanent	Full Time	1
Energy Resources Specialist III (Supervisory)	Certification List	Permanent	Full Time	1
Executive Assistant	Certification List	Permanent	Full Time	1
Mechanical Engineer	Certification List	Permanent	Full Time	1
Office Technician (Typing), LEAP	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Personnel Specialist	Certification List	Permanent	Full Time	1
Research Program Specialist II (Geographic Information Systems)	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Supervisor)	Certification List	Permanent	Full Time	2
Senior Oil And Gas Engineer (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	2
Staff Services Management Auditor	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Permanent	Full Time	1
Electric Generation System Specialist III	Training & Development	Permanent	Full Time	1
Associate Budget Analyst	Transfer	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	Transfer	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Energy Commission Specialist II (TED)	Transfer	Permanent	Full Time	1
Energy Resources Specialist III (Supervisory)	Transfer	Permanent	Full Time	2
Executive Assistant	Transfer	Permanent	Full Time	1
Planner II Energy Facility Siting	Transfer	Permanent	Full Time	1
Senior Electrical Engineer	Transfer	Permanent	Full Time	1

**FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The CEC did not provide eight probationary reports of performance for five of the 35 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments Missing Probation Reports	Total Number of Missing Probation Reports
Accounting Officer (Specialist)	Certification List	2	2
Associate Energy Specialist (TED)	Certification List	1	2
Electric Generation System Specialist I	Certification List	2	4
Total		5	8

**Criteria:** The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (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 CalHR may require. (Gov. Code, § 19172.) CalHR’s regulatory scheme provides that “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.) Specifically, 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. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The CEC states that supervisors are not following through with providing probationary evaluations in a timely manner.

**Action:** It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CEC submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

#### **FINDING NO. 4 – Probationary Evaluations Were Not Timely**

**Summary:** The CEC did not complete four probationary reports of performance in a timely manner.

**Criteria:** The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (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 CalHR may require. (Gov. Code § 19172.) CalHR's regulatory scheme provides that "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." (Code Reg., tit. 2, § 599.795.) Specifically, 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. (Code Reg., titl. 2, § 26, subd. (a)(3).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The CEC states that the probationary evaluations were not timely because supervisors did not complete them by the specified due date.

**Action:** It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CEC submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

**FINDING NO. 5 – Job Announcement Was Not Advertised for the Minimum Period**

**Summary:** The CEC posted one out of 35 job announcements that was advertised for eight calendar days, not meeting the minimum period of 10 calendar days.

**Criteria:** Unless a collective bargaining contract between a recognized public employee organization and the state provides otherwise, all online job announcements shall be posted for a minimum period of ten calendar days, except the appointing power may post a job announcement for a shorter period of time where there is a critical hiring need. (Cal. Code Regs., tit. 2, § 249.2 (b).)

**Severity:** Non-Serious or Technical. By not posting a job announcement for the minimum 10 calendar day period, the department is not engaging in a broad and inclusive recruitment.

**Cause:** The CEC states that the job announcement was inadvertently advertised for five business days because it was mis-keyed into the Exam Certification Online System.

**Action:** It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CEC submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the job bulletin posting requirements of California Code Regulations title 2, section 249.2 (b).

**FINDING NO. 6 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

**Summary:** Of the 35 appointments reviewed, the CEC did not retain the following: one NOPA, two appointee's interview questions and responses, and one candidate's application.

**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:** Non-Serious or Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

**Cause:** The CEC states that it did not have a consistent process for retaining all recruitment documents.

**Action:** It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CEC submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with

the probationary requirements of California Code Regulations title 2, section 26.

### **Unlawful Appointment Investigations**

Departments that entered into an Unlawful Appointment Investigation Delegation Agreement between their executive management and CalHR have the authority to manage their own unlawful appointment investigations. The Delegation Agreement defines the reporting requirements, responsibilities, obligations, and expectations of the department in this process. Overall, the delegation agreement mandates that departments maintain up-to-date records on each unlawful appointment investigation including, at a minimum: the specific facts surrounding the appointment in question, a description of the circumstances which may have resulted in the unlawful appointment, copies of relevant appointment documents, and any information and/or documentation which may demonstrate that the agency and employee acted in good faith when the appointment was offered and accepted. Departments must also maintain a tracking system to monitor its unlawful appointments.

During the period under review, December 1, 2017 through August 31, 2018, the CEC conducted one unlawful appointment investigation. The CRU reviewed all one unlawful appointment investigation, which is listed below:

Classification	Date Investigation Initiated	Date Investigation Concluded
Energy Resources Specialist III (Supervisor)	11/27/17	2/25/18

**FINDING NO. 7 – Unlawful Appointment Investigation Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CEC’s one unlawful appointment investigation was found to comply with the rules set forth in the signed Delegation Agreement with the CalHR.

### **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 California Department of Human Resources by providing access to all required files, documents and data. (*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.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

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. 8 – Equal Employment Opportunity Officer Does Not Report Directly to the Head of the Agency**

**Summary:** Although the organizational chart has an asterisk indicating that the EEO Officer reports directly to the Executive Office, the EEO Officer's duty statement fails to indicate this.

**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.)

**Severity:** Very Serious. Not only is the EEO Officer not directly supervised by the Executive Director, but there was no meaningful reporting relationship on EEO matters. To have an effective EEO program, the head of the organization must be actively involved.

**Cause:** The CEC states that duties of the EEO officer are carried out under the direction of the Executive Office. The EEO officer keeps the

Executive Office apprised of any EEO complaints and issues. However, the EEO officer's duty statement inadvertently left off these duties and did not reflect this reporting structure.

**Action:**

It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CEC submit to the CRU written verification of a formal structure that ensures that the EEO Officer directly reports to the Secretary on EEO matters in order to ensure conformity with the requirements of Government Code section 19795.

**FINDING NO. 9 – Equal Employment Opportunity Officer Also Serves As the Personnel Officer at a State Agency with More Than 500 Employees**

**Summary:**

The CEC's EEO Officer, a Staff Services Manager II, also serves as the Personnel Officer. According to California's 2017-18 Governor's Budget, the CEC employs 673.3 employees, and as such, the Personnel Officer may not serve as both the EEO Officer and Personnel Officer.

**Criteria:**

California Government Code section 19795, subdivision (a), states "The appointing power of each state agency and the director of each state department shall appoint, at the managerial level, an equal employment opportunity officer, who shall report directly to, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency's equal employment opportunity program. In a state agency with less than 500 employees, the equal employment opportunity officer may be the personnel officer."

**Severity:**

Very Serious. The EEO Officer is responsible for developing, implementing, coordinating, and monitoring their department's EEO program. Due to the substantial responsibilities held by each department's EEO Officer, it is essential that each department, employing more than 500 employees, appoint an EEO Officer, at the managerial level, that may successfully maintain the effectiveness of the EEO program without the undue burden of also maintaining the effectiveness of the department's Personnel Office.

**Cause:** The CEC states that the CEC has an effective EEO program that includes policies and procedures for handling complaints under the direction of the Executive Office. The EEO functions are separate from the regular chain of command. The EEO Officer has historically overseen the Selections and EEO Office; however, the recent addition of Classification & Pay oversight added personnel duties.

**Action:** It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CEC submit to SPB a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of California Government Code section 19795.

### **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 private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, December 1, 2017 through August 31, 2018, the CEC had 47 PSC's that were in effect. The CRU reviewed 19 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Alliance for Sustainable Energy, LLC	California Hydrogen Infrastructure Research Consortium	6/30/18 – 3/30/21	\$100,000	Yes
Bruce A. Wilcox, P.E.	Residential Building Science Technical Support	7/1/18 – 12/31/21	\$4,000,000	Yes
BTI Appraisal	CO2 Nexus Equipment Appraisal	6/1/18 – 7/31/18	\$7,500	Yes
California Reporting, LLC	Certified Electronic Reporter Services	7/1/18 – 11/30/20	\$300,000	Yes
Cooperative Personnel Services dba CPS HR Consulting	Professional Education and Development	7/1/18 – 6/30/19	\$75,000	Yes
Douglas Deur, Ph.D., LLC	Tribal Resource Collaboration Planning Project	1/1/17 – 10/1/19	\$225,852	Yes
Energetics Incorporated	Research Roadmap for Cost and Technology Breakthroughs for Renewable Energy Generation	6/4/18 – 11/29/19	\$338,297	Yes
eScribers, LLC	Certified Electronic Reporter Services and Transcription Services	7/1/18 – 11/30/20	\$65,000	Yes
Global Knowledge Training, LLC	Software Training	5/1/18 – 4/30/19	\$30,000	Yes
Industrial Economics, Inc.	Measuring Innovation Progress to Guide Future Investment; Evaluation of EPIC Benefits Methodology	6/29/18 – 2/16/21	\$3,000,000	Yes
Inter-Con Security Systems, Inc.	Security Services	3/1/16 – 1/31/18	\$615,225	Yes
IS, Inc	Software Training	7/1/18 – 6/30/19	\$50,000	Yes
Metropolitan Van & Storage, Inc.	Moving Services	2/16/15 – 2/15/18	\$240,000	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
National Aeronautics and Space Administration	California Baseline Methane Survey: Identification of Large Fugitive Methane Emitters from the Natural Gas Sector	6/30/16 – 6/1/18	\$600,000	Yes
Navigant Consulting Inc.	Energy Efficiency Target Setting Technical Support	6/30/17 – 6/30/20	\$1,500,000	Yes
Navigant Consulting, Inc.	Distributed Energy Resources (DER) Roadmap	6/29/18 – 12/31/19	\$499,065	Yes
South Coast Air Quality Management District	Overhead Catenary Line Installation Project	12/14/14 – 3/31/17	\$1,400,000	Yes
The National Academies of Sciences, Engineering, and Medicine	4th California Climate Change Assessment Event	2/15/18 – 1/14/19	\$199,000	Yes
The Solar Foundation	Solar Jobs Census 2018 Sponsorship	7/12/18 – 6/30/19	\$5,000	Yes

### FINDING NO. 10 – Unions Were Not Notified of Personal Services Contract

**Summary:** The CEC did not notify unions prior to entering into one of the 19 PSC's.

**Criteria:** Government Code section 19132, subdivision (b)(1), mandates that “the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.”

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

**Cause:** The CEC states that the contract was inadvertently treated as an

inter-agency agreement, which does not require notification of unions.

**Action:** It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CEC submits to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132 and AB 906. Copies of any relevant documentation should be included with the plan.

### **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), (b), (c), & 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).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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 biannual basis. (*Ibid.*)

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 CEC's mandated training program that was in effect during the compliance review period. The CEC's supervisory training was found to be in compliance. However, the CEC's ethics and sexual harassment prevention training were found to be out of compliance.

#### **FINDING NO. 11 – Ethics Training Was Not Provided for All Filers**

**Summary:** The CEC did provide ethics training to 12 of 12 new filers within six months of their appointment. However, the CEC did not provide ethics training to two of 48 existing filers.

**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 CEC states that two staff members did not complete the training due to inconsistent follow up to ensure mandatory trainings were completed.

**Action:** The CEC must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed. It is

therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CEC must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a corrective action plan.

**FINDING NO. 12 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

**Summary:** The CEC did provide sexual harassment prevention training to five of five new supervisors within six months of their appointment. However, the CEC did not provide sexual harassment prevention training to four of 29 existing supervisors every two years.

**Criteria:** 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).)

**Severity:** Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

**Cause:** The CEC states that four supervisors did not complete the training due to inconsistent follow up to ensure mandatory trainings were completed.

**Action:** The CEC must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CEC must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a corrective action plan.

**Compensation and Pay**

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee’s salary rate<sup>8</sup> upon appointment depending on the appointment type, the employee’s state employment and pay history, and tenure.

During the period under review, November 1, 2017 through July 31, 2018, the CEC made 35 appointments. The CRU reviewed 17 of those appointments to determine if the CEC applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Energy Specialist (TED)	Certification List	Permanent	Full Time	\$4,997
Air Pollution Specialist	Certification List	Permanent	Full Time	\$7,753
Electric Generation System Specialist I	Certification List	Permanent	Full Time	\$7,058
Energy Resources Specialist III (Managerial)	Certification List	Permanent	Full Time	\$9,006
Energy Resources Specialist III (Supervisory)	Certification List	Permanent	Full Time	\$9,169
Executive Assistant	Certification List	Permanent	Full Time	\$3,220
Mechanical Engineer	Certification List	Permanent	Full Time	\$5,784
Office Technician (Typing), LEAP	Certification List	Permanent	Full Time	\$2,921
Office Technician (Typing)	Certification List	Permanent	Full Time	\$2,921
Personnel Specialist	Certification List	Permanent	Full Time	\$3,220
Senior Oil And Gas Engineer (Specialist)	Certification List	Permanent	Full Time	\$10,345
Staff Services Manager III	Certification List	Permanent	Full Time	\$8,148
Associate Budget Analyst	Transfer	Permanent	Full Time	\$5,988
Energy Commission Specialist II (TED)	Transfer	Permanent	Full Time	\$6,696

<sup>8</sup> “Rate” is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Energy Resources Specialist III (Supervisory)	Transfer	Permanent	Full Time	\$8,643
Senior accounting Officer (Specialist)	Transfer	Permanent	Full Time	\$4,784
Senior accounting Officer (Specialist)	Transfer	Permanent	Full Time	\$4,835

**FINDING NO. 13 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the 17 salary determinations that were reviewed. The CEC 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.

Exceptions to Salary

California Code of Regulations sections 599.674 and 599.676 allow employees to receive a salary rate up to one step (5%) above the salary rate they last received. In those instances when these rules do not provide employees with the equivalent rate last received (1) upon transfer to a deep class or (2) in their former class, then under the authority of Government Code section 19836, an exception to these salary rules can be made. Exceptions to these rules should be applied uniformly for all employees. (Classification and Pay Guide Section 285).

For those affected employees incurring salary loss upon transfer to a deep class, CalHR recommends placing the employee on a T&D Assignment for a period of time sufficient to meet the higher alternate range criteria. Upon successful completion of the T&D assignment, the employee may be transferred to the transferable range, and then moved to the next higher alternate range effective the same day. If this does not provide the employee their current salary, departments may process an exception so the employee does not incur a salary loss (*Ibid.*).

According to, “All departments have delegated authority to approve an exception to the salary rules under the following circumstances: when there is a salary loss upon transfer to a deep class; when there is a reappointment or reinstatement without a break in service.”

During the period under review, November 1, 2017 through July 31, 2018, the CEC authorized one salary exception request. The CRU reviewed the authorized salary

exception request, listed below, to determine if the CEC correctly verified, approved and documented the salary exception authorization process:

Classification	Prior Classification	T&D Assignment? (Y/N)	Approved Salary
Energy Resources Specialist III (Managerial)	Electric Generation System Specialist III	Yes	\$9,627

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, CalHR provides salary rules departments must use when employees move between alternate ranges. They 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, November 1, 2017 through July 31, 2018, the CEC made 21 alternate range movements within a classification<sup>9</sup>. The CRU reviewed 10 of those alternate range movements to determine if the CEC applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	B	C	Full Time	\$6,465
Attorney	B	C	Full Time	\$6,723
Attorney	C	D	Full Time	\$7,524
Electrical Engineer	A	B	Full Time	\$5,874
Electrical Engineer	A	B	Full Time	\$5,901
Information Technology Specialist I	B	C	Full Time	\$6,420
Mechanical Engineer	B	C	Full Time	\$6,757
Mechanical Engineer	C	D	Full Time	\$8,869
Personnel Specialist	B	C	Full Time	\$3,697

<sup>9</sup> 335 transactions.

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	A	B	Full Time	\$3,914

The CRU found no deficiencies in 7 out of 10 salary determinations for alternate range movements that the DSS made during the compliance review period. The CEC appropriately calculated and processed the salaries for each alternate range movement and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

However, the CEC incorrectly applied compensation laws, rules and/or CalHR policies and guidelines for three alternate range movements reviewed.

**FINDING NO. 14 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

**Summary:** The CRU found the following errors in the CEC's determination of employee compensation:

Classification	Description of Finding(s)	Criteria
Personnel Specialist	The department failed to give the employee an accelerated MSA when keying the employee's alternate range change.	599.674 (a)
Electrical Engineer	The department failed to give the employee a full 5% increase when keying the employee's alternate range change.	599.676 599.673
Attorney	The department overlooked the employee's original appointment date which caused the employee to receive their alternate range change prior to the one-year requirement.	599.676 599.673

**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.) 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.

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

**Cause:** The CEC states that the three alternate range movements were processed incorrectly due to a computation or keying error caused by lack of training.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CEC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.683 and 599.674 (a). The CEC must correct the salary issues in order to ensure the employees are compensated correctly.

### Hiring Above Minimum Requests

Government Code section 19836 authorizes CalHR to allow payments above-the minimum rate in the salary range in order to hire persons who have extraordinary qualifications. On April 1, 2005, CalHR granted delegated authority to all departments to approve HAM's for extraordinary qualifications, former legislative employees, and former exempt employees (PML, "Delegation of Personnel Management Functions," 2005-012). On September 25, 2007, CalHR also granted delegated authority for all departments to approve exceptions to the HAM criteria for extraordinary qualifications for all new state employees without prior review or approval from CalHR. However, for existing state employees, departments should obtain approval from CalHR and delegated authority does not apply (PML, "Hiring Above Minimum Standards for Extraordinary Qualifications," 2010-005).

Prior to approving a HAM under delegated authority, departments should demonstrate and document the candidate's extraordinary qualifications. The candidate's extraordinary qualifications should contribute to the work of the department significantly beyond that

which other applicants offer. The extraordinary qualifications should provide expertise in a particular area of the department’s program well beyond the normal requirements of the class. The department may also consider the unique talent, ability or skill demonstrated by the candidate’s previous job experience as extraordinary qualifications, but the scope and depth of such experience should be more significant than the length. The qualifications and hiring rates of state employees already in the same class should be carefully considered (CalHR Online Manual Section 1707). Additionally, departments must request and approve HAM’s before a candidate accepts employment (*Ibid.*).

During the period under review, November 1, 2017 through July 31, 2018, the CEC authorized three HAM requests. The CRU reviewed two of those authorized HAM requests to determine if the CEC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Electric Generation System Specialist I	List Appointment	New to the State	Range A	\$8,280
Energy Commission Specialist I (TED)	List Appointment	New to the State	Range A	\$6,820

**FINDING NO. 15 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that the HAM requests the CEC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Scales, specifically Pay Differential 14, the ten 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, November 1, 2017 through July 31, 2018, the CEC issued bilingual pay to three employees. The CRU reviewed all three bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base
Associate Governmental Program Analyst	R01	Full Time
Information Officer I (Specialist)	R01	Full Time
Information Officer I (Specialist)	R01	Full Time

**FINDING NO. 16 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found that the bilingual pay authorized to three employees satisfied civil service laws, Board rules, and CalHR policies and guidelines.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention (CalHR Classification and Pay Manual Section 230).

California State Civil Service Pay Scales (Pay Scales) Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the

classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, November 1, 2017 through July 31, 2018, the CEC issued pay differentials<sup>10</sup> to 32 employees. The CRU reviewed 14 pay differentials to ensure compliance with applicable CalHR policies and guidelines.

**FINDING NO. 17 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the 14 pay differentials that the CEC authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments (OOC) and Pay

For excluded<sup>11</sup> and most rank and file employees, out of class 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).

According to CalHR's 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 DPA Rule 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 provision or DPA regulation. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires (Section 375).

During the period under review, November 1, 2017 through July 31, 2018, the CEC issued out-of-class pay<sup>12</sup> to eight employees. The CRU reviewed six of these out-of-class assignments to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

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

<sup>11</sup> "Excluded employee" means an employee as defined in section 3572(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.

<sup>12</sup> Excluding bilingual and arduous pay.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Energy Specialist (Efficiency)	R10	Energy Commission Specialist I (TED)	12/1/17 - 3/30/18
Associate Governmental Program Analyst	R01	Training Officer II	10/2/17 - 1/29/18
Energy Commission Supervisor II (TED)	S10	Energy Resources Specialist III (Managerial)	1/1/18 - 3/30/18
Information Technology Supervisor I	S01	Senior Information Technology Analyst (Supervisor)	2/13/17 - 1/31/18
Office Technician (Typing)	R04	Administrative Assistant I	9/1/17 - 12/29/17
Planner II-Energy Facility Siting	R01	Energy Commission Specialist III (TED)	5/31/18 - 9/28/18

**FINDING NO. 18 – Out-of-Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the six out-of-class pay assignments that the CEC authorized during the compliance review period. Out-of-class pay assignments were 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**

**Actual Time Worked**

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 nine 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. Time is accrued by months so that the immediate prior 12-calendar months are the ones used to count the 189 working days. ATW includes; any

day on which the employee physically worked, regardless of the length of time worked on that day<sup>13</sup>, any day for which the employee is on paid absence<sup>14</sup>, any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay<sup>15</sup>.

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. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 189 days in any 12-consecutive month period. (Cal. Code Regs., tit. 2, § 265.1, subd. (a).) For youth, student 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).)

For permanent intermittent employees, a maximum of 1,500 hours has been placed on the number of hours which a permanent intermittent employee may work in 12 months. Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year (CalHR Online Manual Section 1202 and applicable Bargaining Unit Agreements), however Bargaining Unit 6 employees may work up to 2,000 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) without reinstatement, loss or interruption of benefits for all state employers.

At the time of the review, the CEC had 41 employees on ATW. The CRU reviewed 20 of those ATW appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines.

**FINDING NO. 19 - Actual Time Worked (ATW) Employee Attendance Record Was Not Properly Documented**

**Summary:** The CEC did not correctly key the actual number of hours worked for one of 20 employees' timesheets into the Uniform State Payroll System. As a result, the employee was overcompensated.

<sup>13</sup> For example, two hours or ten hours counts as one day.  
<sup>14</sup> For example, vacation, sick leave, compensating time off, etc.  
<sup>15</sup> For example, straight time, time and one-half, double time, etc.

**Criteria:** In accordance with California Code of Regulations, title 2, section 599.665, departments are responsible for maintaining accurate and timely leave accounting records for their employees. In an effort to ensure departmental compliance, CalHR mandates that “each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. In accordance with Government Code section 12475, each appointing power shall correctly and promptly certify to the Controller all changes, modifications, additions and deletions to the pay roll roster in compliance with all applicable civil service, fiscal, and other pertinent laws, rules, and regulations.

**Severity:** Very Serious. Discrepancies in timekeeping practices and procedures may result in payroll and leave accounting discrepancies.

**Cause:** The CEC states that there was an oversight in keying pay for one intermittent employee due to a miscalculation in the hours worked.

**Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CEC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Article VII, section 5 of the Constitution.

### Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. 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. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time (PML, “Administrative Time Off (ATO) – Policy, Procedure and Documentation Requirements”, 2012-008).

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor (§ 599.785.5, Administrative Time Off - During State of Emergency).

During the period under review June 1, 2017 through May 1, 2018, the CEC placed four employees on ATO. The CRU reviewed all four ATO appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Associate Energy Specialist (Efficiency)	9/28/17-10/4/17	7
Associate Governmental Program Analyst	5/22/18-5/29/18	8
CEA	12/8/17-1/2/18	26
Energy Analyst	12/26/17-1/3/18	9

**FINDING NO. 20 – Administrative Time Off (ATO) Was Not Properly Documented**

**Summary:** The CEC did not document ATO in conformity with the established policies and procedures. Specifically, one employee’s ATO hours were not keyed into the Leave Accounting System. In addition, one employee’s ATO timeframe established by the ATO plan did not match the timeframe on the employee’s timesheet.

**Criteria:** Appointing authorities are authorized to approve ATO for up to five (5) working days under GC 19991.10 and have delegated authority to approve up to 30 calendar days. (GC 19991.10 and CalHR Online Manual Section 2121). Any ATO in excess of 30 calendar days must be approved in advance by CalHR. In most cases, if approved, the approval will be for an additional 30 calendar days only. The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. When an appointing authority requests initial approval for ATO, or an extension of a previously approved grant of ATO, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for

the additional period of time. ATO may not be used and will not be granted for an indefinite period. If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend ATO, the employee must be returned to work in some capacity. Regardless of the length of the ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (CalHR Online Manual Section 2121).

**Severity:** Serious. Use of ATO is subject to audit and review by CalHR and by other control agencies to ensure it is being utilized appropriately. Failure to grant ATO in conformity with the procedures in this policy may result in CalHR revoking the appointing authority's delegation to utilize ATO without first obtaining approval from CalHR.

**Cause:** The CEC states that there was an oversight in keying the documented ATO time for one timesheet in the Leave Accounting System (LAS). In addition, an ATO letter had a clerical error (typo) for the end date of ATO that stated January 2nd instead of January 3rd.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CEC submits to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of GC 19991.10 and CalHR Online Manual Section 2121.

### 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).

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. 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. Attendance records shall be

corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, March 1, 2018 through May 31, 2018, the CEC reported 45 units comprised of 609 active employees during the March 2018 pay period, 45 units comprised of 612 active employees during the April 2018 pay period, and 45 units comprised of 625 active employees during the May 31, 2018 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
March 2018	140	35	35	0
March 2018	150	8	8	0
March 2018	151	8	8	0
March 2018	180	12	12	0
March 2018	212	7	7	0
April 2018	140	36	36	0
April 2018	150	8	8	0
April 2018	151	8	8	0
April 2018	180	12	12	0
April 2018	212	7	7	0

**FINDING NO. 21 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed**

**Summary:** The CEC failed to provide completed Leave Activity and Correction Certification forms for five out of 45 units reviewed during the March and April 2018 pay periods.

**Criteria:** In accordance with California Code of Regulations, title 2, section 599.665, departments are responsible for maintaining accurate and timely leave accounting records for their employees. In an effort to ensure departmental compliance, CalHR mandates that departments’ audit processes include the comparison of “what has been recorded in the leave accounting system as accrued/earned or used by each employee to their attendance record for the pay period”

(CalHR Online Manual Section 2101). CalHR also directs departments to identify and record all leave errors found using a Leave Activity and Correction Certification form (*Ibid.*). Moreover, CalHR requires that departments certify that all leave records for the unit/pay period identified on the certification form have been reviewed regardless of whether errors were identified.

**Severity:** Non-serious or 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 CEC states that it did not have a documented process for conducting monthly leave audits during the review period.

**Action:** The CEC must take appropriate steps to ensure that their monthly internal audit process is documented. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CEC must incorporate the completion of Leave Activity and Correction Certification forms for all leave records reviewed even when errors are not identified or corrected.

### Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, "the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than" the established limit as stipulated by the applicable bargaining unit agreement<sup>16</sup>. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the "employee may accumulate

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<sup>16</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days.” (Cal. Code Regs., tit. 2, § 599.738).

In accordance with CalHR Online Manual Section 2124, departments must create a leave reduction policy for their organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place.

As of December 2017, 82 CEC employees exceeded the established limits of vacation or annual leave. The CRU reviewed 25 of those employees’ leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Administrative Assistant I	R01	355.75	No
Administrative Assistant I	R01	289.00	No
Assistant Chief Counsel	M02	326.75	No
Associate Civil Engineer	R09	333.64	No
Associate Electrical Engineer	R09	151.00	No
Attorney IV	R02	245.55	No
Attorney IV	R02	368.00	No
CEA	M01	685.00	No
Electric Generation System Specialist III	S09	750.00	No
Electric Transmission System Program Specialist III	S09	887.00	No
Energy Commission Specialist I (TED)	R10	617.00	No
Energy Commission Specialist II (TED)	R10	96.50	No
Energy Commission Specialist III (Forecasting)	R10	956.00	No
Energy Commission Specialist III (Forecasting)	R10	1682.50	No
Energy Resource Specialist III (Managerial)	M10	373.00	No
Energy Resource Specialist III (Managerial)	M10	618.00	No

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Energy Resource Specialist III (Managerial)	M10	478.00	No
Planner II (Energy Facility Sitting)	R01	608.50	No
Senior Electrical Engineer	R09	489.75	No
Senior Mechanical Engineer	R09	309.00	No
Senior Mechanical Engineer	R09	503.00	No
Senior Mechanical Engineer	R09	717.00	No
Senior Mechanical Engineer	R09	666.75	No
Senior Mechanical Engineer	R09	368.00	No
Staff Services Manager I	S01	744.10	No
<b>Total</b>		13,618.79	

**FINDING NO. 22 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits**

**Summary:** Although the CEC has a leave reduction policy, the CEC did not provide leave reduction plans for 25 of 25 employees reviewed whose leave balances significantly exceeded established limits.

**Criteria:** It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1), ensuring employees maintain the capacity to optimally perform their jobs. The employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, unless exempted, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (Cal. Code Regs., tit. 2, § 599.742.)

According to CalHR Online Manual Section 2124, “it is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and;

ensure employees who have significant ‘over-the-cap’ leave balances have a leave reduction plan in place and are actively reducing hours”.

**Severity:** Serious. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

**Cause:** The CEC states that a leave reduction policy was not implemented in 2017 for all staff exceeding the established limits.

**Action:** The CEC must take appropriate steps to ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours. It is therefore recommended that no later than 60 days after the SPB’s Executive Officer’s approval of these findings and recommendations, the CEC must establish a plan to address leave reduction efforts.

### State Service

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service<sup>17</sup> (Cal. Code Regs., tit. 2, § 599.608).

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 additional qualifying monthly pay period as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. 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

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<sup>17</sup> Except as provided in sections 599.609 and 599.776.1(b) of these regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of these regulations.

before and after breaks in service shall be counted. Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated (Cal. Code Regs., tit. 2, § 599.739). On the first day following a qualifying monthly pay period, excluded employees<sup>18</sup> shall be allowed credit for annual leave with pay (Cal. Code Regs., tit. 2, § 599.752).

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

During the period under review, November 1, 2017 through July 31, 2018, the CEC had 32 employees with non-qualifying pay period 715 transactions<sup>19</sup>. The CRU reviewed 16 715 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines.

**FINDING NO. 23 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU determined that the CEC 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 recruit, hire and assign 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. 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. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be

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<sup>18</sup> As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) as it applies to employees excluded from the definition of state employee under section Government Code 3513(c), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

<sup>19</sup> 715 transaction code is used for: temporary leaves of 30 calendar days or less (per SPB Rule 361) resulting in a non-qualifying pay period; used for qualifying a pay period while on NDI; used for qualifying a pay period while employee is on dock and furlough.

subject to these policies. Overall, 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 (CalHR Online Manual Section 1204).

**FINDING NO. 24 – Department Does Not Maintain an Updated Written Nepotism Policy**

**Summary:** The CEC did not have an updated written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees. The nepotism policy provided during the compliance review period had not been revised since 2000 and was missing multiple components listed in CalHR’s PML 2015-14 “Statewide Guidance on Nepotism Policies.”

**Criteria:** Departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees, and 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. (PML, “Statewide Guidance on Nepotism Policies,” 2015-14).

**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. The maintaining of a current written nepotism policy, and its dissemination to all staff, is the basis for achieving these ends.

**Cause:** The CEC states that it currently has a nepotism policy, however it has not been updated to incorporate changes from CalHR.

**Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CEC submit to the CRU a written corrective action plan that the department will implement to ensure conformity with PML 2015-14.

## Workers' Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee 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. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (SCIF) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the SCIF by April 1, 2015, whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, the CEC did not employ volunteers during the compliance review period.

<b>FINDING NO. 25 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines</b>
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After reviewing the CEC's workers' compensation process that was in effect during the compliance review period, the CRU verified that when the CEC 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 CEC received worker's compensation claims, the CEC properly provided claim forms within one working day of notice or knowledge of injury.

## Performance Appraisals

According to Government Code section 19992.2, departments 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 67 permanent CEC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Administrative Assistant I	4/23/17
Administrative Assistant I	2/1/18
Air Pollution Specialist	6/11/17
Air Pollution Specialist	10/4/17
Air Resources Engineer	1/11/17
Associate Energy Specialist (Forecasting)	8/2/17
Associate Energy Specialist (TE&D)	2/9/17
Associate Budget Analyst	3/31/17
Associate Governmental Program Analyst	7/24/17
Associate Governmental Program Analyst	1/31/17
Associate Governmental Program Analyst	9/1/17
Associate Governmental Program Analyst	9/28/17
Associate Governmental Program Analyst	9/30/17
Associate Governmental Program Analyst	12/31/17
Associate Personnel Analyst	1/2/17
Associate Personnel Analyst	2/28/17
Associate Personnel Analyst	4/14/17
Associate Personnel Analyst	9/24/17
Associate Editor of Publications	8/21/17
Assistant Chief Counsel	1/31/17
Assistant Chief Counsel	3/31/17
Attorney	9/8/17
Attorney III	9/1/17
Attorney III	12/1/17
Attorney IV	7/31/17
Business Service Officer I (Specialist)	9/20/17
Electric Generation System Specialist I	7/6/17
Electric Generation System Specialist I	11/1/17

Classification	Date Performance Appraisals Due
Electric Generation System Specialist III	5/30/17
Electric Transmission System Program Specialist II	11/22/17
Electric Transmission System Program Specialist II	12/29/17
Energy Commission Specialist I (Forecasting)	9/19/17
Energy Commission Specialist I (TE&D)	12/4/17
Energy Commission Specialist II (Forecasting)	3/1/17
Energy Commission Specialist II (TE&D)	3/31/17
Engineering Geologist	4/29/17
Energy Resource Specialist III (Managerial)	6/29/17
Energy Resource Specialist III (Managerial)	6/29/17
Hearing Adviser II, CEC	12/16/17
Information Officer I (Specialist)	8/6/17
Information Officer I (Specialist)	9/23/17
Legal Secretary	5/4/17
Mechanical Engineer	2/24/17
Mechanical Engineer	4/30/17
Mechanical Engineer	6/10/17
Mechanical Engineer	10/26/17
Mechanical Engineer	11/19/17
Mechanical Engineer	12/2/17
Mechanical Engineer	12/25/17
Mechanical Engineer	12/26/17
Personnel Specialist	11/16/17
Planner II-Energy Facility Sitting	1/10/17
Planner II-Energy Facility Sitting	1/30/17
Planner II-Energy Facility Sitting	2/21/17
Planner II-Energy Facility Sitting	3/31/17
Planner III-Energy Facility Sitting	1/30/17
Senior Civil Engineer	1/19/17
Senior Electrical Engineer	3/2/17
Senior Mechanical Engineer	2/28/17
Senior Mechanical Engineer	3/31/17
Senior Mechanical Engineer	10/31/17
Senior Mechanical Engineer	11/1/17

Classification	Date Performance Appraisals Due
Staff Management Auditor	6/16/17
Staff Services Analyst	5/1/2017
Staff Services Analyst	10/11/17
Staff Services Manager I	1/2/17
Staff Services Manager I	2/16/17

**FINDING NO. 26 – Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines**

The CRU found no deficiencies in the 67 performance appraisals selected for review. Accordingly, the CEC performance appraisal policy and processes satisfied civil service laws, Board rules and CalHR policies and guidelines.

**DEPARTMENTAL RESPONSE**

The CEC’s response is attached as Attachment 1.

**SPB REPLY**

Based upon the CEC’s written response, the CEC will comply with the CRU recommendations and findings and provide the CRU with an action plan.

It is further recommended that the CEC comply with the afore-stated recommendations within 60 days of the Executive Officer’s approval and submit to the CRU a written report of compliance.



May 10, 2019

State Personnel Board  
Policy and Compliance Review Division  
801 Capitol Mall  
Sacramento, California 95814

The California Energy Commission (Commission) is in receipt of the State Personnel Board's (SPB) compliance review report of the Commission's personnel practices. Based on the compliance review conducted, the Commission's Human Resources Branch provides the following response to each of the findings as presented by the SPB.

- 1. FINDING NO. 3 – Eight probationary evaluations were not provided for five of 35 appointments reviewed. Generally, each of the 35 appointments would have three probationary evaluations provided at set intervals.**

Cause: The Commission notifies the supervisor/manager, deputy director and personnel liaison of upcoming probationary evaluations by sending two calendar appointments. Eight of approximately 105 probationary evaluations were not completed because supervisors were not following through with completing timely probationary evaluations.

Corrective action: The Commission will improve the process by training supervisors on the importance of completing timely probationary evaluations. In addition, the Commission has updated the process to add the Probationary Report Form (STD 636) to the calendar reminder appointments.

- 2. FINDING NO. 4 – Four probationary evaluations were not timely for four of 35 appointments reviewed.**

Cause: The Commission notifies the supervisor/manager, deputy director and personnel liaison of upcoming probationary evaluations by sending two calendar appointments. Four of approximately 105 probationary evaluations were not timely, because supervisors did not complete them by the specified due date.

Corrective action: The Commission will improve the process by training supervisors on the importance of completing timely probationary evaluations. In addition, the Commission has updated the process to add the Probationary Report Form (STD 636) to the calendar reminder appointments.

**3. FINDING NO. 5 – One of 35 job announcements was not advertised for the minimum period.**

Cause: The one job announcement identified was inadvertently advertised for five business days because it was mis-keyed into the Exam Certification Online System.

Corrective action: The Exam Certification Online System has been updated and will not allow an advertising period less than the minimum amount of time, as required.

**4. FINDING NO. 6 – Appointment documentation was not kept for the appropriate amount of time. Of the 35 appointment packages reviewed, one application, two sets of interview questions, and one NOPA were missing.**

Cause: The Commission did not have a consistent process for retaining all recruitment documents.

Corrective action: Subsequent to the audit, the Commission created a Supervisor's Hiring Toolkit and provided associated training. This toolkit instituted a consistent recruitment process with checklists to receive all required documentation. In addition, the Commission will request a copy of the NOPA from the State Controller's Office to ensure a copy is available in personnel.

**5. FINDING NO. 8 – Equal employment opportunity officer does not report directly to the head of the agency.**

Cause: The duties of the EEO officer are carried out under the direction of the Executive Office. The EEO officer keeps the Executive Office apprised of any EEO complaints and issues. The EEO officer's duty statement inadvertently left off these duties and did not reflect this reporting structure.

Corrective action: The Commission will dedicate a position to function as the Commission's EEO officer reporting directly to the Executive Office. The EEO officer will conduct regular meetings with the Executive Office. In the meantime, the current EEO officer will continue to meet regularly with the Executive Office.

**6. FINDING NO. 9 – Equal employment opportunity officer also serves as the personnel officer at a state agency with more than 500 employees**

Cause: The Commission has an effective EEO program that includes policies and procedures for handling complaints under the direction of the Executive Office. The EEO functions are separate from the regular chain of command. The EEO officer has historically overseen the Selections and EEO office; however, the recent addition of Classification & Pay oversight added personnel duties.

Correction action: The Commission will dedicate a position to function as the Commission's EEO officer reporting directly to the Executive Office.

**7. FINDING NO. 10 – Unions were not notified of one of 19 personal services contracts reviewed**

Cause: The South Coast Air Quality Management District (SCAQMD) agreement was inadvertently treated as an inter-agency agreement, which does not require the notification of unions.

Correction action: The Commission has informed all contract management staff this type of contract requires union notification. The bargaining unit notification document has been revised to ensure it is clear that a notification is required when it comes to these type of contracts.

**8. FINDING NO. 11 – Ethics training was not provided for two of 48 filers**

Cause: The Ethics training is provided to all staff through an online portal via the California Natural Resources Agency. All staff are required to take this online course and supervisors are sent notification reminders when staff are due for recertification. However, two staff members did not complete the training due to inconsistent follow up to ensure mandatory trainings were completed.

Correction action: The Commission has a process in place to notify employees of upcoming training recertification. The Commission will improve the process by training supervisors on the importance of staff completing their training requirements. In addition, we will encourage our supervisors to consider delinquent trainings as part of the evaluation criteria on employee evaluations.

**9. FINDING NO. 12 – Sexual harassment prevention training was not provided for four of 29 supervisors**

Cause: The Sexual Harassment Prevention training is available to all staff through an online portal via the California Natural Resources Agency. All staff are required to take this online course and supervisors are sent notification

reminders when staff are due for recertification. However, four supervisors did not complete the training due to inconsistent follow up to ensure mandatory trainings were completed.

Correction action: The Commission has a process in place to notify employees of upcoming training recertification. The four supervisors have completed the required sexual harassment prevention training since the review. The Commission will improve the process by training supervisors on the importance of staff completing their training requirements. In addition, we will encourage our supervisors to consider delinquent trainings as part of the evaluation criteria on employee evaluations.

**10. FINDING NO. 14 – Three of 10 alternate range movements did not comply with civil service laws, board rules, and/or CalHR policies and guidelines**

Cause: Three alternate range movements were processed incorrectly due to a computation or keying error caused by lack of training.

Corrective action: The Commission has corrected the three errors and reviewed the process with personnel staff. The Commission has also created a division of labor in the personnel office to improve staff supervision and to provide training to the personnel specialists.

**11. FINDING NO. 19 – One of 20 employees' actual time worked (ATW) employee attendance record was not properly documented**

Cause: There was an oversight in keying pay for one intermittent employee. This was due to a miscalculation in the hours worked.

Corrective action: The Commission has sent the appropriate documentation to the State Controller's Office to establish an accounts receivable to collect the overpayment. The Commission has also created a division of labor in the personnel office to improve staff supervision and to provide training to the personnel specialists.

**12. FINDING NO. 20 – Two of four administrative time off (ATO) records was not properly documented**

Cause: There was an oversight in keying the documented ATO time for one timesheet in the Leave Accounting System (LAS). In addition, an ATO letter had a clerical error (typo) for the end date of ATO that stated January 2 instead of January 3.

Corrective action: The Commission has corrected the two errors and implemented a process to communicate ATO information with personnel specialists.

**13. FINDING NO. 21 – Leave activity and correction certification forms were not completed for five of 45 leave records reviewed.**

Cause: The Commission did not have a documented process for conducting monthly leave audits during the review period.

Corrective action: The Commission has implemented an audit process and the required monthly audits are now being conducted. The Commission identifies and records leave errors and makes the necessary corrections.

**14. FINDING NO. 22 – 25 of 25 leave reduction plans were not provided to employees whose leave balances exceeded established limits.**

Cause: In 2017, a leave reduction policy was not implemented at the Commission. In early 2018, a policy and procedure was implemented to establish leave reduction plans for all staff exceeding the established limits.

Corrective action: The Commission has implemented a policy and procedure for leave reduction plans. The Commission provided the 2018 leave reduction plans to the SPB for the 25 employees identified in the review.

**15. FINDING NO. 24 – Department does not maintain an updated written nepotism policy.**

Cause: The Commission currently has a nepotism policy; however, it has not been updated to incorporate changes from CalHR.

Corrective action: The Commission will review the current policy against CalHR's HR Manual and update as required. In addition, all new and existing staff will be given a copy of the updated policy and will submit an acknowledgement form.

The Commission strives to ensure best employment practices and remains committed to working with the SPB. Thank you for the opportunity to discuss and respond to the draft compliance review report.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Drew Bohan', with a stylized, sweeping underline.

Drew Bohan  
Executive Director