



COMPLIANCE REVIEW REPORT

CALIFORNIA PUBLIC UTILITIES COMMISSION

Compliance Review Unit
State Personnel Board
August 5, 2020

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority’s compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Public Utilities Commission’s (CPUC) personnel practices in the areas of examinations, appointments, EEO, PSC’s, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

| Area | Finding |
|------------------------------|--|
| 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 and Those That Were Reviewed Were Untimely ¹ |
| Appointments | Position Was Improperly Filled by Training and Development Assignment |
| Equal Employment Opportunity | Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period ² |
| Personal Services Contracts | Unions Were Not Notified of Personal Services Contracts |
| Personal Services Contracts | Written Justification Was Not Provided for all Personal Services Contracts |
| Mandated Training | Ethics Training Was Not Provided for All Filers |
| Mandated Training | Supervisory Training Was Not Provided for All Supervisors ³ |

¹ Repeat finding. May 11, 2017, the CPUC’s Compliance Review Report identified 17 missing probation reports in 10 of 40 appointment files reviewed.

² Repeat finding. The May 11, 2017, report identified 2 out of 26 complaints where the CPUC failed to apprise complainants of the status of their complaints.

³ Repeat finding. The May 11, 2017, report identified 10 out of 14 new supervisors did not receive basic supervisory training within 6 months of appointment. Additionally, the CPUC did not provide sexual harassment prevention training to 4 of 14 new supervisors within 6 months of appointment, and to 17 of 20 existing supervisors as required every two years.

| Area | Finding |
|----------------------|--|
| Mandated Training | Sexual Harassment Prevention Training Was Not Provided for All Supervisors ³ |
| Compensation and Pay | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Compensation and Pay | Incorrect Authorization of Pay Differential |
| Compensation and Pay | Incorrect Authorization of Out-of-Class Pay |
| Leave | Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records |
| Leave | Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits |
| Leave | Incorrect Application of State Service and Leave Transactions |
| Policy | Department Does Not Maintain a Current Written Nepotism Policy |
| Policy | Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | Performance Appraisals Were Not Provided to All Employees |

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 CPUC regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises. The CPUC is dedicated to ensuring that consumers have safe, reliable utility service at reasonable rates, protecting against fraud, and promoting the health of California's economy.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CPUC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁴. The primary objective of the review was to determine if the CPUC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the CPUC'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 CPUC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the CPUC's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

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

The CPUC's appointments were also selected for review to ensure the CPUC applied salary regulations accurately and correctly processed employees' compensation and pay.

⁴ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The CRU examined the documentation that the CPUC 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: bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the CPUC did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, or arduous pay.

The review of the CPUC'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 CPUC's PSC's were also reviewed.⁵ It was beyond the scope of the compliance review to make conclusions as to whether the CPUC's justifications for the contracts were legally sufficient. The review was limited to whether the CPUC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CPUC'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, managers, and CEAs were provided leadership and development training and sexual harassment prevention training within statutory timelines.

The CRU also identified the CPUC'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 CPUC to provide a copy of their leave reduction policy.

The CRU reviewed the CPUC's Leave Activity and Correction Certification forms to verify that the CPUC 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 CPUC'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 CPUC's employees' employment and pay history, state service records, and leave

⁵If 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.

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 CPUC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CPUC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

On June 19, 2020, an exit conference was held with the CPUC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CPUC's written response on July 3, 2020, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, November 1, 2018, through July 30, 2019, the CPUC conducted 36 examinations. The CRU reviewed 12 of those examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|--|-----------|--|-----------------|-------------|
| Administrative Law Judge I | Open | Written ⁶ | 5/1/2019 | 24 |
| Administrative Law Judge II | Open | Written and Qualification Appraisal Panel ⁷ | 1/24/2019 | 44 |
| Associate Signal and Train Control Inspector | Open | Qualification Appraisal Panel and Written | 3/6/2019 | 5 |
| Career Executive Assignment (CEA) A, Advisor to a Commissioner | CEA | Statement of Qualifications (SOQ) ⁸ | 4/10/2019 | 27 |
| CEA B, External Audits Director and Enterprise Risk Compliance Officer | CEA | SOQ | 1/11/2019 | 7 |
| Consumer Services Supervisor | Open | Performance ⁹ and Written | 8/20/2019 | 7 |
| Program and Project Supervisor | Open | Training and Experience (T&E) ¹⁰ | 11/15/2018 | 29 |
| Program Manager | Open | T&E | 5/3/2019 | 19 |

⁶ 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.

⁷ The Qualification Appraisal Panel interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

⁸ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁹ A Performance examination requires applicants to replicate/simulate job related tasks or duties.

¹⁰ The Training and Experience 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.

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|---|-----------|--|-----------------|-------------|
| Senior Utilities Engineer (Specialist) | Open | T&E | 6/14/2019 | 18 |
| Senior Utilities Engineer (Supervisor) | Open | T&E | 11/8/2018 | 13 |
| Supervising Transportation Representative | Open | Qualifications Appraisal Panel and Written | 6/11/2019 | 6 |
| Utilities Engineer | Open | SOQ | 1/7/2019 | 22 |

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

The CRU reviewed 2 CEA and 10 open examinations which the CPUC administered in order to create eligible lists from which to make appointments. The CPUC published and distributed examination bulletins containing the required information for all examinations. Applications received by the CPUC were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the CPUC conducted during the compliance review period.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate’s name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2), and (HR Manual, section 1105.) The appointing authority shall promptly notify the

candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the review period, November 1, 2018, through July 30, 2019, the CPUC conducted 25 permanent withhold actions. The CRU reviewed 12 of these permanent withhold actions, which are listed below:

| Exam Title | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold |
|---|---------|-----------------------------|-----------------------------|--|
| Accountant I | 0PB31 | 11/25/18 | 1/9/19 | Failed to Meet Minimum Qualifications. |
| Associate Budget Analyst | 5PB04 | 10/17/18 | 8/28/19 | Failed to Meet Minimum Qualifications. |
| Associate Governmental Program Analyst | 9PB04 | 1/25/18 | 1/7/19 | Failed to Meet Minimum Qualifications. |
| Information Technology Associate | 7PB33 | 5/23/19 | 9/3/19 | Failed to Meet Minimum Qualifications. |
| Public Utilities Regulatory Analyst II | 7PB11 | 5/31/19 | 8/2/19 | Failed to Meet Minimum Qualifications. |
| Public Utilities Regulatory Analyst III | 7PB12 | 12/6/18 | 1/25/19 | Failed to Meet Minimum Qualifications. |
| Public Utilities Regulatory Analyst III | 7PB12 | 12/7/18 | 5/21/19 | Failed to Meet Minimum Qualifications. |
| Public Utilities Regulatory Analyst IV | 7PB13 | 1/27/19 | 7/22/19 | Failed to Meet Minimum Qualifications. |
| Public Utilities Regulatory Analyst V | 7PB13 | 5/18/19 | 7/11/19 | Failed to Meet Minimum Qualifications. |

| Exam Title | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold |
|------------------------|---------|-----------------------------|-----------------------------|--|
| Senior Legal Typist | 5PB41 | 3/14/19 | 5/14/19 | Failed to Meet Minimum Qualifications. |
| Senior Legal Typist | 5PB41 | 9/21/18 | 5/14/19 | Failed to Meet Minimum Qualifications. |
| Staff Services Analyst | 7PB34 | 12/29/18 | 2/13/19 | Failed to Meet Minimum Qualifications. |

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

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

Appointments

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

During the period under review, November 1, 2018, through July 30, 2019, the CPUC made 283 appointments. The CRU reviewed 14 of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|---|------------------------|-----------|-----------|---------------|
| Accountant I (Specialist) | Certification List | Permanent | Full Time | 1 |
| Attorney | Certification List | Permanent | Full Time | 1 |
| Business Service Officer I (Specialist) | Certification List | Permanent | Full Time | 1 |
| Management Services Technician | Certification List | Permanent | Full Time | 1 |
| Personnel Supervisor II | Certification List | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst I | Certification List | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst III | Certification List | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst V | Certification List | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst III | Certification List | Permanent | Full Time | 1 |
| Senior Utilities Engineer (Supervisor) | Certification List | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst III | Transfer | Permanent | Full Time | 1 |
| Staff Services Manager II (Supervisory) | Transfer | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst V | Reinstatement | Permanent | Full Time | 1 |
| Public Utilities Regulatory Analyst III | Training & Development | Permanent | Full Time | 1 |

FINDING NO. 3 – Probationary Evaluations Were Not Provided for all Appointments Reviewed and Those That Were Reviewed Were Untimely

Summary:

The CPUC did not provide 2 probationary reports of performance for 2 of the 14 appointments reviewed by the CRU. In addition, the CPUC did not provide two probationary reports of performance in a timely manner, as reflected in the tables below. This is the second consecutive time this has been a finding for CPUC.

| Classification | Appointment Type | Number of Appointments | Total Number of Missing Probation Reports |
|---|--------------------|------------------------|---|
| Public Utilities Regulatory Analyst V | Certification List | 1 | 1 |
| Staff Services Manager II (Supervisory) | Transfer | 1 | 1 |

| Classification | Appointment Type | Number of Appointments | Total Number of Late Probation Reports |
|---|--------------------|------------------------|--|
| Public Utilities Regulatory Analyst III | Certification List | 1 | 1 |
| Public Utilities Regulatory Analyst V | Reinstatement | 1 | 1 |

Criteria:

The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity:

Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the

probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: CPUC had new staff in the human resources office who may not have received sufficient training to educate supervisors and managers on the importance of timely probationary evaluations. In addition, the tracking system for monitoring probationary reports can “incur errors and delays.”

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to the timely completion of probation reports. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 4 – Position Was Improperly Filled by Training and Development Assignment

Summary: The CPUC improperly filled one Public Utilities Regulatory Analyst III position with a Training and Development (T&D) assignment. At the time of the T&D assignment, the candidate held permanent status as an Emergency Services Coordinator, Office of Emergency Services. Given existing T&D rules, the candidate should have been placed into the Public Utilities Regulatory Analyst I position.

Criteria: California Code of Regulations, tit. 2, section 438, subdivision (b)(2), provides that employees shall be allowed to accept training and development assignments involving the duties of a different class with a promotional salary range provided that:

(A) The higher salaried class is the class in the desired occupational area nearest in salary to the employee's current class that will provide an appropriate training experience; and

(B) When the T&D class is more than three steps higher than the employee's current class, the intent of the T&D assignment is to prepare the employee for a permanent move to the training and development class or to a closely related class, and the employee will meet minimum qualifications for the higher salaried class by the conclusion of the T&D assignment; and

(C) The training and development class is not in the same class series as the employee's present class.

Severity: Very Serious. Although T&D assignments are used to prepare employees for advancement, they cannot legally replace the competitive promotional process. Therefore, with limited exceptions, the Board's regulations require that T&D assignments be made laterally. Plans for movement to higher levels must always involve competition in an examination.

Cause: The CPUC's Classification and Pay section was understaffed, and new staff received inadequate training on Training and Development rules.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to filling Training and Development assignments. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Equal Employment Opportunity

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

who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

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. 5 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Summary: The CPUC provided evidence that 24 discrimination complaints related to a disability, medical condition, or denial of reasonable accommodation were filed during the compliance review period of October 1, 2018 through September 30, 2019. Five of the 24 complaint investigations exceeded 90 days and the CPUC failed to provide written communication to the complainant regarding the status of the complaint. This is the second consecutive time this has been a finding for CPUC.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. Employees were not informed of the reasons for delays in decisions for discrimination complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: During the review period, CPUC did not have a process in place for notifying employees of delays in investigation of complaints.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the

corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to providing written notification to complainants of delay(s) in completing investigations of their discrimination complaints. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

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

During the period under review, November 1, 2018, through July 30, 2019, the CPUC had 40 PSC’s that were in effect. The CRU reviewed 15 of those, which are listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|------------------|-------------|------------------|-----------------|---------------------------|---------------------|
| Alexan RPM, Inc. | IT Services | 1/8/18 – 1/31/20 | \$287,960 | No | No |

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|-------------------------------------|-------------------------|---------------------|-----------------|---------------------------|---------------------|
| Business Advantage Consulting, Inc. | Business Analysis | 7/31/17 – 7/31/19 | \$209,895 | No | No |
| Coleman, Inc. ¹¹ | Consulting | 5/5/19 – 1/31/20 | \$220,000 | Yes | No |
| Jacobs Engineering Group, Inc. | Data Collection | 6/30/19 – 6/30/22 | \$1,622,484 | Yes | Yes |
| KPMG, LLP | IT Services | 6/3/19 – 11/30/20 | \$1,500,000 | Yes | No |
| Krieger & Stewart, Inc. | Consulting | 11/1/18 – 12/31/19 | \$4,999 | Yes | Yes |
| Navigant Consulting, Inc. | Evaluations | 11/16/18 – 11/15/20 | \$2,980,197 | Yes | Yes |
| Navigant Consulting, Inc. | Evaluations | 5/1/19 – 12/31/19 | \$685,889 | Yes | Yes |
| Paul Weiss Rifkind Wharton | Legal | 2/11/19 – 2/11/22 | \$28,000,000 | Yes | Yes |
| Pierce Atwood, LLP | Legal | 5/1/19 – 4/30/22 | \$1,004,554.26 | Yes | Yes |
| Rothschild Financial Consulting | Expert Witness | 6/17/19 – 6/16/22 | \$1,504,175 | Yes | Yes |
| SBW Consulting, LLC | Evaluations | 2/4/19 – 2/5/22 | \$15,635,615 | Yes | Yes |
| Self-Help for the Elderly | Language Assistance | 6/7/19 – 6/6/22 | \$10,050,000 | Yes | Yes |
| Sound Data Management, LLC | Maintenance and Support | 6/2019 – 6/2020 | \$486,250 | No | No |
| Stinson Leonard Street, LLP | Legal | 6/10/19 – 6/10/22 | \$2,800,000 | Yes | Yes |

FINDING NO. 6 – Unions Were Not Notified of Personal Services Contract

¹¹ Emergency contract; union notification not required pursuant to Government Code section 19132, subd. (b)(1).

Summary: The CPUC did not notify unions prior to entering into 4 of the 15 PSC's.

Criteria: 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. (Gov. Code, § 19132, subd. (b)(1).)

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

Cause: The CPUC believed that either they had properly notified unions or that contracts did not require union notification.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to mandated notification to unions of pending personal services contracts. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 7 – Written Justification Was Not Provided for All Personal Services Contracts

Summary: The CPUC did not prepare or retain written justification on how three contracts satisfied Government Code section 19130, subdivision (b).

| Vendor | Services | Contract Dates | Contract Amount |
|-------------------------------------|-------------------------|----------------------|-----------------|
| Alexan RPM, Inc. | IT Services | 1/8/2018 - 1/31/2020 | \$9,999.99 |
| Business Advantage Consulting, Inc. | Business Analysis | 7/31/17 – 7/31/19 | \$209,895 |
| Sound Data Management, LLC | Maintenance and Support | 6/2019 - 6/2020 | \$1,160,139 |

Criteria: Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60, subd. (a).) The agency shall maintain the written justification for the duration of the contract and any extensions of the contract or in accordance with the record retention requirements of section 26, whichever is longer. (Cal. Code Reg., tit. 2, § 547.60, subd. (b).)

Severity: Serious. Without specific written justification detailing why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not determine whether the department's PSC's complied with current procedural requirements.

Cause: CPUC staff believed they had provided acceptable justification or that a justification was not required.

SPB Response: No justification for the three contracts identified above was provided by CPUC.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to the mandated written justification for personal services contracts. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months

of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), and (b), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) 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 biennial 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 CPUC's mandated training program that was in effect during the compliance review period, August 1, 2017, through July 30, 2019.

FINDING NO. 8 – Ethics Training Was Not Provided for All Filers

Summary: The CPUC did not provide ethics training to 104 of 547 existing filers. In addition, the CPUC did not provide ethics training to 23 of 66 new filers within 6 months of appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The CPUC's tracking system did not provide adequate tracking of all ethics training.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to mandated ethics training. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 9 – Supervisory Training Was Not Provided for All Supervisors

Summary: The CPUC did not provide basic supervisory training to 36 of 45 new supervisors within 12 months of appointment and did not provide manager training to 9 of 10 new managers within 12 months of appointment. This is the second consecutive time this has been a finding for CPUC.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subds. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

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

Cause: The CPUC relied on the limited availability of classes in Sacramento which created significant challenges for offices located outside of Sacramento to comply with the mandatory training requirement.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to mandated basic supervisory and initial managerial training. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 10 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CPUC did not provide sexual harassment prevention training to 37 of 40 new supervisors within 6 months of their appointment. In addition, the CPUC did not provide sexual harassment prevention training to 54 of 81 existing supervisors every 2 years. This is the second consecutive time this has been a finding for CPUC.

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 that all new and existing 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: CPUC reports a lack of an adequate tracking and data system combined with a lack of accountability by leadership to ensure mandatory attendance of sexual harassment prevention trainings.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to mandated sexual harassment prevention training. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate¹² upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, November 1, 2018, through July 30, 2019, the CPUC made 283 appointments. The CRU reviewed 13 of those appointments to determine if the CPUC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

¹² "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|--------------------|-----------|-----------|-----------------------|
| Accountant I (Specialist) | Certification List | Permanent | Full Time | \$3,245 |
| Attorney | Certification List | Permanent | Full Time | \$7,609 |
| Business Service Officer I (Specialist) | Certification List | Permanent | Full Time | \$4,281 |
| Management Services Technician | Certification List | Permanent | Full Time | \$3,186 |
| Personnel Supervisor II | Certification List | Permanent | Full Time | \$5,601 |
| Public Utilities Regulatory Analyst I | Certification List | Permanent | Full Time | \$3,822 |
| Public Utilities Regulatory Analyst III | Certification List | Permanent | Full Time | \$6,917 |
| Public Utilities Regulatory Analyst V | Certification List | Permanent | Full Time | \$7,947 |
| Public Utilities Regulatory Analyst III | Certification List | Permanent | Full Time | \$6,917 |
| Senior Utilities Engineer (Supervisor) | Certification List | Permanent | Full Time | \$10,477 |
| Public Utilities Regulatory Analyst III | Transfer | Permanent | Full Time | \$8,535 |
| Staff Services Manager II (Supervisory) | Transfer | Permanent | Full Time | \$8,070 |
| Public Utilities Regulatory Analyst V | Reinstatement | Permanent | Full Time | \$9,054 |

FINDING NO. 11 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The CPUC appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, November 1, 2018, through July 30, 2019, the CPUC employees made 23 alternate range movements within a classification. The CRU reviewed 12 of those alternate range movements to determine if the CPUC applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

| Classification | Prior Range | Current Range | Time Base | Salary (Monthly Rate) |
|---------------------------------------|-------------|---------------|-----------|-----------------------|
| Consumer Affairs Representative | A | B | Full time | \$4,146 |
| Consumer Affairs Representative | A | B | Full time | \$4,431 |
| Consumer Affairs Representative | A | B | Full time | \$4,353 |
| Information Technology Specialist I | B | C | Full time | \$7,920 |
| Public Utilities Regulatory Analyst I | A | B | Full time | \$4,141 |
| Public Utilities Regulatory Analyst I | A | B | Full time | \$4,141 |
| Public Utilities Regulatory Analyst I | A | B | Full time | \$4,141 |
| Utilities Engineer | B | C | Full time | \$7,061 |
| Utilities Engineer | B | C | Full time | \$7,977 |
| Utilities Engineer | A | B | Full time | \$6,100 |
| Utilities Engineer | B | D | Full time | \$7,974 |
| Utilities Engineer | C | D | Full time | \$9,005 |

FINDING NO. 12 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

Bilingual Pay

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

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

During the period under review, August 1, 2018, through April 30, 2019, the CPUC issued bilingual pay to one employee. The CRU reviewed the one bilingual pay authorization to ensure compliance with applicable CalHR policies and guidelines.

| Classification | Bargaining Unit | Time Base | No. of Appts. |
|--|-----------------|-----------|---------------|
| Public Utilities Regulatory Analyst II | R01 | Full time | 1 |

FINDING NO. 13 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Pay Differentials

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

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, August 1, 2018, through April 30, 2019, the CPUC issued pay differentials¹³ to 45 employees. The CRU reviewed 13 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Pay Differential | Monthly Amount |
|--|------------------|----------------|
| Administrative Law Judge I | 84 | 5% |
| Administrative Law Judge II | 84 | 5% |
| Administrative Law Judge II | 84 | 5% |
| Information Technology Associate | 13 | 5% |
| Legal Secretary | 141 | 5% |
| Program and Project Supervisor | 432 | \$250 |
| Program and Project Supervisor | 432 | \$250 |
| Senior Utilities Engineer (Specialist) | 433 | 2% |
| Senior Utilities Engineer (Specialist) | 433 | 2% |
| Utilities Engineer | 432 | \$250 |

¹³ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

| Classification | Pay Differential | Monthly Amount |
|--------------------|------------------|----------------|
| Utilities Engineer | 432 | \$250 |
| Utilities Engineer | 433 | 2% |
| Utilities Engineer | 433 | 2% |

FINDING NO. 14 – Incorrect Authorization of Pay Differential

Summary: The CRU found 1 error in the 13 pay differentials reviewed:

| Classification | Area | Description of Finding(s) | Criteria |
|-----------------|---------------------------|--|----------------------|
| Legal Secretary | Recruitment and Retention | The employee did not serve 12 or more qualifying pay periods at the maximum rate to receive the pay differential resulting in overpayment. | Pay Differential 141 |

Criteria: A pay differential may be appropriate 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. 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.)

Severity: Very Serious. The CPUC 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: Inadequate staffing and lack of training prevented a proper review of one pay differential.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the

department is complying with applicable laws and policies relative to the correct authorization of pay differentials. Copies of any relevant documentation demonstrating that the corrective action has been implemented, including recovery of any overpayments, must be included with the corrective action response.

Out-of-Class Assignments and Pay

For excluded¹⁴ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, August 1, 2018, through April 30, 2019, the CPUC issued OOC pay to 16 employees. The CRU reviewed 13 of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

| Classification | Bargaining Unit | Out-of-Class Classification | Time Frame |
|--------------------------------------|-----------------|------------------------------|--------------------|
| Accountant I (Specialist) | R01 | Accountant Trainee | 10/1/18 – 1/28/19 |
| Consumer Affairs Representative, PUC | R01 | Consumer Services Supervisor | 9/11/18 – 12/29/19 |

¹⁴ “Excluded employee” means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

| | | | |
|--|-----|--|---------------------|
| Legal Secretary | R04 | Senor Legal Analyst | 11/13/18 – 3/12/19 |
| Office Technician (General) | R04 | Legal Secretary | 12/13/18 – 4/11/19 |
| Personnel Technician I | R01 | Personnel Specialist | 1/14/19 – 5/13/19 |
| Program and Project Supervisor | S09 | Program Manager | 8/20/18 – 8/19/19 |
| Public Utilities Regulatory Analyst II | R01 | Public Utilities Regulatory Analyst V | 2/6/2019 - 6/5/2019 |
| Public Utilities Regulatory Analyst V | R01 | Program and Project Supervisor | 1/8/19 – 2/28/19 |
| Public Utilities Regulatory Analyst V | R01 | Program and Project Supervisor | 9/10/18 – 1/7/19 |
| Public Utilities Regulatory Analyst V | R01 | Program and Project Supervisor | 10/8/18 – 12/16/18 |
| Senior Utilities Engineer (Specialist) | S09 | Program and Project Supervisor | 4/25/19 – 4/24/20 |
| Staff Services Analyst (General) | R01 | Associate Governmental Program Analyst | 1/14/19 – 5/13/19 |
| Staff Services Analyst (General) | R01 | Public Utilities Regulatory Analyst I | 10/10/18 – 12/31/18 |

FINDING NO. 15 – Incorrect Authorization of Out-of-Class Pay

Summary: The CRU found four errors in the CPUC’s authorization of OOC pay:

| Classification | Area | Description of Findings | Criteria |
|---------------------------------|------------------|---|---------------------|
| Consumer Affairs Representative | Out of Class Pay | Employee was not compensated at the entrance rate for the duration of the out-of-class assignment resulting in underpayment. Additionally, out-of-class compensation did not end when the employee was appointed to another classification. | Pay Differential 91 |

| Classification | Area | Description of Findings | Criteria |
|---------------------------------------|------------------|--|---------------------|
| Office Technician (General) | Out of Class Pay | Employee was not compensated at the entrance rate for the duration of the out-of-class assignment resulting in underpayment. | Pay Differential 91 |
| Public Utilities Regulatory Analyst V | Out of Class Pay | Employee was not compensated at the entrance rate for the duration of the out-of-class assignment resulting in underpayment. | Pay Differential 91 |
| Public Utilities Regulatory Analyst V | Out of Class Pay | Employee was not compensated for 11 days of the out-of-class assignment resulting in underpayment. | Pay Differential 91 |

Criteria: Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment and further, taken as a whole are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the Department certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or

civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

Severity: Very Serious. The CPUC 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: Inadequate staffing and lack of training resulted in four errors in the authorization of out-of-class pay. In addition, the CPUC did not have a process in place to prevent over or underpayments.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to proper authorization of out-of-class pay. Copies of any relevant documentation demonstrating that the corrective action has been implemented, including steps taken to rectify underpayments, must be included with the corrective action response.

Leave

Positive Paid Employees

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

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days¹⁵ worked and paid absences,¹⁶ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive

¹⁵ For example, two hours or ten hours counts as one day.

¹⁶ For example, vacation, sick leave, compensating time off, etc.

month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

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

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

At the time of the review, the CPUC had 77 positive paid employees whose hours were tracked. The CRU reviewed 25 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification | Time Base | Time Frame | Time Worked |
|----------------------------------|--------------|------------------|-------------|
| Accountant I (Specialist) | Intermittent | 7/1/18 – 6/30/19 | 951.5 hours |
| Information Technology Manager I | Intermittent | 7/1/18 – 6/30/19 | 851 hours |
| Management Services Technician | Intermittent | 7/1/18 – 6/30/19 | 728 hours |
| Personnel Specialist | Intermittent | 7/1/18 – 6/30/19 | 873 hours |
| Public Utilities Counsel IV | Intermittent | 7/1/18 – 6/30/19 | 782 hours |

| Classification | Time Base | Time Frame | Time Worked |
|---|--------------|-------------------|--------------|
| Public Utilities Regulatory Analyst III | Intermittent | 7/1/18 – 6/30/19 | 946 hours |
| Public Utilities Regulatory Analyst V | Intermittent | 7/1/18 – 6/30/19 | 953 hours |
| Public Utilities Regulatory Analyst V | Intermittent | 7/1/18 – 6/30/19 | 960 hours |
| Public Utilities Regulatory Analyst V | Intermittent | 7/1/18 – 6/30/19 | 956 hours |
| Public Utilities Regulatory Analyst V | Intermittent | 7/1/18 – 6/30/19 | 960 hours |
| Public Utility Financial Examiner IV | Intermittent | 7/1/18 – 6/30/19 | 810 hours |
| Senior Utilities Engineer (Specialist) | Intermittent | 7/1/18 – 6/30/19 | 960 hours |
| Senior Utilities Engineer (Specialist) | Intermittent | 7/1/18 – 6/30/19 | 882 hours |
| Senior Utilities Engineer (Specialist) | Intermittent | 7/1/18 – 6/30/19 | 691 hours |
| Special Consultant | Intermittent | 7/1/18 – 6/30/19 | 710 hours |
| Special Consultant | Intermittent | 7/1/18 – 6/30/19 | 93 hours |
| Special Consultant | Intermittent | 7/1/18 – 6/30/19 | 949.15 hours |
| Student Assistant | Intermittent | 6/18/18 – 6/17/19 | 464.25 hours |
| Student Assistant | Intermittent | 7/20/17 - 7/19/18 | 110 hours |
| Utilities Engineer | Intermittent | 7/1/18 – 6/30/19 | 896.9 hours |
| Youth Aid | Intermittent | 7/13/18 - 7/12/19 | 207 hours |
| Youth Aid | Intermittent | 6/22/18 – 6/21/19 | 177 hours |
| Youth Aid | Intermittent | 6/25/18 – 6/24/19 | 288 hours |
| Youth Aid | Intermittent | 6/22/18 – 6/21/19 | 254 hours |
| Youth Aid | Intermittent | 7/11/18 – 7/10/19 | 272 hours |

FINDING NO. 16 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CPUC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, May 1, 2018, through April 30, 2019, the CPUC placed 35 employees on ATO. The CRU reviewed 18 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

| Classification | Time Frame | Amount of Time on ATO |
|--|---------------------|-----------------------|
| Administrative Assistant I | 10/19/18 – 10/30/18 | 8 days |
| Associate Transportation Operations Supervisor | 1/31/19 – 2/11/19 | 8 days |
| Consumer Affairs Representative | 6/15/18 – 6/15/18 | 3.5 hours |
| Consumer Affairs Representative | 6/15/18 – 6/15/18 | 3.5 hours |
| Consumer Affairs Representative | 8/24/18 – 8/24/18 | 1.5 hours |
| Consumer Affairs Representative | 8/24/18 – 8/24/18 | 2 hours |
| Consumer Affairs Representative | 8/24/18 – 8/24/18 | 3 hours |
| Consumer Affairs Representative | 8/17/18 – 8/24/18 | 6 days |
| Information Technology Associate | 7/16/18 – 7/31/18 | 12 days |

| Classification | Time Frame | Amount of Time on ATO |
|---|-------------------|-----------------------|
| Information Technology Associate | 8/1/18 - 8/9/18 | 7 days |
| Information Technology Manager II | 8/3/18 – 11/30/18 | 20 days |
| Information Technology Manager II | 8/3/18 – 11/30/18 | 22 days |
| Public Utilities Regulatory Analyst I | 8/3/18 – 8/24/18 | 4 days |
| Public Utilities Regulatory Analyst I | 9/13/18 – 9/13/18 | 1 hour |
| Public Utilities Regulatory Analyst III | 5/1/18 – 5/17/18 | 17 days |
| Public Utilities Regulatory Analyst V | 6/15/18 – 6/15/18 | 3 hours |
| Public Utilities Regulatory Analyst V | 9/14/18 – 9/14/18 | 3 hours |
| Senior Management Auditor | 3/25/19 – 3/29/19 | 5 days |

FINDING NO. 17 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CPUC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

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

records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, January 31, 2019, through April 30, 2019, the CPUC reported 122 units comprised of 1185 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

| Timesheet Leave Period | Unit Reviewed | Number of Employees | Number of Timesheets Reviewed | Number of Missing Timesheets |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| February 2019 | 105 | 25 | 23 | 2 |
| February 2019 | 135 | 16 | 16 | 0 |
| March 2019 | 735 | 16 | 16 | 0 |
| March 2019 | 737 | 27 | 27 | 0 |
| April 2019 | 321 | 31 | 31 | 0 |
| April 2019 | 331 | 27 | 27 | 0 |

FINDING NO. 18 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records

Summary: The CPUC failed to provide completed Leave Activity and Correction Certification forms for both units reviewed during the February 2019 pay period.

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

Severity: Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post-audit purposes, the completion of Leave Activity

and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: Inadequate staffing, lack of training for new human resources staff, and staff in transition resulted in Leave Activity and Correction Certification Forms not being completed and/or retained.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to timely completion of Leave Activity and Correction Certification forms. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave Reduction Efforts

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. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion."¹⁷ (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount¹⁸ as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

¹⁷ For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for Bargaining Unit 06 there is no established limit and for Bargaining Unit 05 the established limit is 816 hours.

¹⁸ Excluded employees shall not accumulate more than 80 days.

It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation, ensuring employees maintain the capacity to optimally perform their jobs. (Cal. Code Regs., tit. 2, § 599.742.1.) For excluded employees, 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, 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. (*Ibid.*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work- life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2018, 124 CPUC employees exceeded the established limits of vacation or annual leave. The CRU reviewed 59 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 Law Judge II | R02 | 344.49 | Yes |
| Administrative Law Judge II | R02 | 166 | Yes |
| Administrative Law Judge II | R02 | 137 | Yes |
| Associate Budget Analyst | R01 | 686 | No |
| Associate Governmental Program Analyst | R01 | 976.75 | Yes |
| Associate Governmental Program Analyst | R01 | 700.33 | Yes |
| Associate Governmental Program Analyst | R01 | 187 | Yes |
| Associate Governmental Program Analyst | R01 | 159.25 | Yes |
| Associate Governmental Program Analyst | R01 | 142.25 | Yes |
| CEA | M01 | 767 | No |
| CEA | M01 | 669 | No |
| CEA | M01 | 417.5 | Yes |
| CEA | M01 | 317 | Yes |
| CEA | M01 | 297 | No |
| Information Technology Specialist II | R01 | 904.5 | Yes |
| Information Technology Supervisor I | S01 | 185 | Yes |
| Management Services Technician | R01 | 296.5 | Yes |
| Personnel Specialist | R01 | 292.5 | Yes |
| Personnel Specialist | R01 | 195.5 | No |
| Personnel Supervisor I | S01 | 386 | Yes |
| Program and Project Supervisor | S09 | 487.5 | No |

| Classification | Collective Bargaining Identifier | Total Hours Over Established Limit | Leave Reduction Plan Provided |
|---|----------------------------------|------------------------------------|-------------------------------|
| Program and Project Supervisor | S09 | 485 | Yes |
| Program and Project Supervisor | S09 | 412.5 | No |
| Program and Project Supervisor | S09 | 251 | Yes |
| Program and Project Supervisor | S09 | 201.5 | Yes |
| Program and Project Supervisor | S09 | 193.7 | No |
| Program and Project Supervisor | S09 | 182 | Yes |
| Program and Project Supervisor | S09 | 175 | Yes |
| Program and Project Supervisor | S09 | 173.5 | Yes |
| Program and Project Supervisor | S09 | 156 | Yes |
| Program Manager | M09 | 682.5 | Yes |
| Program Manager | M09 | 575 | Yes |
| Program Manager | M09 | 507 | Yes |
| Program Manager | M09 | 260 | Yes |
| Program and Project Supervisor | S09 | 1093 | Yes |
| Public Utilities Regulatory Analyst IV | R01 | 160 | Yes |
| Public Utilities Regulatory Analyst V | R01 | 696.25 | Yes |
| Public Utilities Regulatory Analyst V | R01 | 262 | Yes |
| Public Utilities Regulatory Analyst V | R01 | 206 | Yes |
| Public Utilities Regulatory Analyst V | R01 | 185.75 | Yes |
| Public Utilities Regulatory Analyst V | R01 | 176.5 | Yes |
| Public Utilities Regulatory Analyst V | R01 | 159.5 | Yes |
| Public Utilities Counsel III | R02 | 208 | No |
| Public Utilities Counsel IV | R02 | 702 | Yes |
| Public Utilities Counsel IV | R02 | 200.5 | Yes |
| Supervisor Operation and Safety Section | S11 | 345 | Yes |
| Senior Accounting Officer (Supervisor) | S01 | 221 | Yes |
| Senior Legal Typist | R04 | 278.25 | Yes |
| Senior Utilities Engineer (Specialist) | R09 | 744 | Yes |
| Senior Utilities Engineer (Specialist) | R09 | 633 | Yes |
| Senior Utilities Engineer (Specialist) | R09 | 320.5 | Yes |
| Senior Utilities Engineer (Specialist) | R09 | 176 | Yes |
| Staff Services Manager I | E48 | 488 | Yes |
| Staff Services Manager I | S01 | 328.5 | Yes |
| Staff Services Manager I | E48 | 151.75 | Yes |
| Staff Services Manager II (Managerial) | M01 | 196.3 | Yes |
| Staff Services Manager II (Managerial) | M01 | 180.25 | Yes |
| Supervising Transportation Representative | S01 | 254.3 | Yes |
| Utilities Engineer | R09 | 176 | Yes |
| Total | | 21,511.12 | |

FINDING NO. 19 – Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits

Summary: The CPUC did not provide leave reduction plans for 9 of the 60 employees reviewed whose leave balances significantly exceeded established limits.

Criteria: 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. (Human Resources Manual Section 2124.) 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. Employees who have significant "over-the-cap" leave balances must have a leave reduction plan in place and be actively reducing hours. (*Ibid.*)

Severity: Technical. 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 CPUC reports lack of oversight, insufficient training and inconsistent reminders to notify and/or follow-up to ensure that Leave Reduction plans were completed for all employees whose leave balances exceeded established limits contributed to this finding.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to timely completion of Leave Reduction plans for employees whose leave balances significantly exceed established limits. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

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.¹⁹ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees²⁰ 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, August 1, 2018, through April 30, 2019, the CPUC had seven employees with non-qualifying pay period transactions. The CRU reviewed 14

¹⁹ Except as provided in California Code of Regulations, title 2, sections 599.609 and 599.776.1, subd. (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.

²⁰ As identified in Government Code sections 19858.3, subd. (a), 19858.3, subd. (b), or 19858.3, subd. (c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subd. (c), or California Code of Regulations, title 2, section 599.752, subd. (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

| Type of Transaction | Time base | Number Reviewed |
|---------------------------|-----------|-----------------|
| Qualifying Pay Period | Full time | 5 |
| Non-Qualifying Pay Period | Full time | 9 |

FINDING NO. 20 – Incorrect Application of State Service and Leave Transactions

Summary: The CRU found the following errors in the CPUC’s state service transactions, which resulted in the employees earning state service credits and leave accruals to which they were not entitled:

| Type of Transaction | Time base | State Service Incorrectly Posted | Leave Accruals Incorrectly Posted |
|---------------------------|-----------|----------------------------------|-----------------------------------|
| Non-Qualifying Pay Period | Full time | 2 | 2 |

Criteria: In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code Regs., tit.2, § 599.608.) Absences from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency 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.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

Severity: Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

Cause: The CPUC reports lack of oversight and insufficient training contributed to this finding.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to the correct application of state service and leave credits. Copies of any relevant documentation demonstrating that the corrective action has been implemented, including demonstration that the transactions(s) have been corrected, must be included with the corrective action response.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

FINDING NO. 21 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The CPUC does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Criteria: It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring, and assigning employees on the basis of merit. (*Ibid.*)

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

Cause: During the review period, CPUC’s draft nepotism policy had not yet been approved or disseminated to staff.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to maintain a current written nepotism policy. Copies of any relevant documentation demonstrating that the corrective action has been implemented, including the final policy and proof it has been disseminated to all staff, must be included with the corrective action response.

Workers' Compensation

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

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

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

FINDING NO. 22 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 51 permanent CPUC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

| Classification | Date Performance Appraisals Due |
|---|---------------------------------|
| Accountant Trainee | 2/17/2018 |
| Accounting Officer (Specialist) | 12/31/2018 |
| Administrative Law Judge II | 8/11/2018 |
| Administrative Law Judge II | 7/6/2018 |
| Administrative Law Judge II | 7/30/2018 |
| Assistant Chief | 5/26/2018 |
| Associate Budget Analyst | 12/31/2018 |
| Associate Governmental Program Analyst | 11/30/2018 |
| Associate Governmental Program Analyst | 4/4/2018 |
| Associate Railroad Track Inspector | 4/15/2018 |
| Attorney IV | 12/31/2018 |
| Consumer Services Supervisor | 5/31/2018 |
| Information Technology Associate | 7/5/2018 |
| Information Technology Specialist I | 8/31/2018 |
| Information Technology Supervisor I | 10/20/2018 |
| Labor Relations Specialist | 6/12/2018 |
| Legal Support Supervisor II | 5/30/2018 |
| Program And Project Supervisor | 3/31/2018 |
| Program And Project Supervisor | 12/31/2018 |
| Program Technician II | 5/17/2018 |
| Program Technician III | 10/31/2018 |
| Public Utilities Counsel III | 1/31/2018 |
| Public Utilities Counsel III | 3/22/2018 |
| Public Utilities Counsel IV | 12/9/2018 |
| Public Utilities Regulatory Analyst I | 8/28/2018 |
| Public Utilities Regulatory Analyst III | 6/30/2018 |
| Public Utilities Regulatory Analyst III | 8/7/2018 |
| Public Utilities Regulatory Analyst III | 12/31/2018 |
| Public Utilities Regulatory Analyst III | 1/31/2018 |
| Public Utilities Regulatory Analyst IV | 5/1/2018 |
| Public Utilities Regulatory Analyst IV | 11/22/2018 |

| Classification | Date Performance Appraisals Due |
|---|---------------------------------|
| Public Utilities Regulatory Analyst IV | 5/15/2018 |
| Public Utilities Regulatory Analyst V | 1/17/2018 |
| Public Utilities Regulatory Analyst V | 1/6/2018 |
| Public Utilities Regulatory Analyst V | 11/17/2018 |
| Public Utilities Regulatory Analyst V | 12/19/2018 |
| Public Utilities Regulatory Analyst V | 10/31/2018 |
| Public Utilities Regulatory Analyst V | 8/12/2018 |
| Public Utilities Regulatory Analyst V | 6/14/2018 |
| Senior Transportation Operations Supervisor | 4/16/2018 |
| Senior Utilities Engineer (Specialist) | 11/13/2018 |
| Senior Utilities Engineer (Specialist) | 8/7/2018 |
| Senior Utilities Engineer (Supervisor) | 10/31/2018 |
| Staff Services Analyst (General) | 10/2/2018 |
| Staff Services Manager I | 10/11/2018 |
| Staff Services Manager I | 9/1/2018 |
| Staff Services Manager I | 6/7/2018 |
| Training Officer III | 7/24/2018 |
| Utilities Engineer | 10/11/2018 |
| Utilities Engineer | 7/4/2018 |
| Utilities Engineer | 9/26/2018 |

FINDING NO. 23 – Performance Appraisals Were Not Provided to All Employees

Summary: The CPUC did not provide annual performance appraisals to 33 of 51 employees reviewed after the completion of the employee’s probationary period.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: Inadequate staffing in the Performance Management Unit resulted in delays notifying supervisors and managers when the performance appraisals were due. In addition, tracking mechanisms were inconsistent as due dates varied either by birth month or on an annual basis.

Corrective Action: Within 90 days of the date of this report, the CPUC must submit to the SPB a written corrective action response that addresses the corrections the department will implement to demonstrate that the department is complying with applicable laws and policies relative to the timely completion of performance appraisals. Copies of any relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The CPUC's response is attached as Attachment 1.

SPB REPLY

Based upon the CPUC's written response, the CPUC will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 3, 2020

Michelle La Grandeur, Chief
Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

SUBJECT: Response to the State Personnel Board Draft Report "*Compliance Review Report, California Public Utilities Commission*"

Dear Ms. La Grandeur:

The Human Resources Division (HRD), Administrative Services Division and Information Technology Services Division of the California Public Utilities Commission (CPUC) is providing the following response to the June 2020 draft compliance review from the State Personnel Board entitled, "*Compliance Review Report, California Public Utilities Commission.*"

The CPUC has been working on updating policies, processes, practices, and procedures for the last two years. This review is a good report card for our progress and the work that still needs to be accomplished.

Please find the CPUC's responses below:

Finding No. 3 – Probationary Evaluations Were Not Provide for all Appointments Reviewed and Those That Were Reviewed Were Untimely

The CPUC did not provide 2 probationary reports of performance for 2 of the 14 appointments reviewed by the CRU. In addition, the CPUC did not provide two probationary reports of performance in a timely manner, as reflected in the tables below. This is the second consecutive time this has been a finding for CPUC.

Cause: The Division Liaisons (DL) are responsible for disseminating probationary date information to supervisors and managers. During the audit period approximately 50 percent of the DL's were new to their positions and may not have received sufficient training to educate supervisors and managers on the importance of preparing timely probationary evaluations. In addition, HRD's current tracking system can incur errors and delays. Also, with the decentralization of CPUC offices the delivery and return of reports requires more coordination for proper collection.

Finding No. 4 – Position Was Improperly Filled by Training and Development Assignment

The CPUC improperly filled one Public Utilities Regulatory Analyst III position with a Training and Development (T&D) assignment. At the time of the T&D assignment, the candidate held permanent status as an Emergency Services Coordinator, Office of Emergency Services. Given

existing T&D rules, the candidate should have been placed into the Public Utilities Regulatory Analyst I position.

Cause: During the audit period, there was a lack of adequate staffing and training for new staff in the Classification and Pay section on Training and Development rules.

Finding No. 5 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

The CPUC provided evidence that 24 discrimination complaints related to a disability, medical condition, or denial of reasonable accommodation were filed during the compliance review period of October 1, 2018 through September 30, 2019. Five of the 24 complaint investigations exceeded 90 days and the CPUC failed to provide written communication to the complainant regarding the status of the complaint. This is the second consecutive time this has been a finding for CPUC.

Cause: Prior to the current Equal Employment Opportunity (EEO) Officer arriving in February 2020, the EEO Office did not provide written 90-day notices to complainants. These 90-day notices have been created and are now part of a standard response to complainants for any investigation that exceeds 90 days. The sending of these notices is also documented in the investigation tracking spreadsheet that the EEO Office manages.

Finding No. 6 – Unions Were Not Notified of Personal Services Contract

The CPUC did not notify unions prior to entering into 4 of the 15 PSC's.

Cause: CPUC staff believed they had either provided the proper notification or that notification would not be required because it was not bid out.

Finding No. 7 – Written Justification Was Not Provided for All Personal Services Contracts

The CPUC did not prepare or retain sufficient written justification on how three contracts satisfied Government Code section 19130, subdivision (b).

Cause: CPUC staff believed they had provided acceptable justification or that a justification would not be required because it was either not bid out or a California Standard (STD.) 215 form was not used.

Finding No. 8 - Ethics Training Was Not Provided for All Filers

The CPUC did not provide ethics training to 104 of 547 existing filers. In addition, the CPUC did not provide ethics training to 23 of 66 new filers within 6 months of appointment.

Cause: CPUC's previous tracking system did not provide adequate tracking of all ethics training. The CPUC has recently acquired a vendor software program that includes input

of pertinent information for those employees subject to the CPUC's conflict of interest regulations. The database generates email notifications and reminders of required training to applicable employees. This increased visibility, along with tracking of all certificates of completion, will allow the CPUC to enforce accountability and ensure compliance.

Finding No. 9 – Supervisory Training Was Not Provided for All Supervisors

The CPUC did not provide basic supervisory training to 36 of 45 new supervisors within 12 months of appointment and did not provide manager training to 9 of 10 new managers within 12 months of appointment. This is the second consecutive time this has been a finding for CPUC.

Cause: During the audit period, the CPUC did not have the ability to administer the Supervisor Development Program (SDP) in-house and relied on the limited availability of classes which created significant challenges for an office headquartered outside of Sacramento. The CPUC is in the process of transitioning the California Human Resources SDP to the CPUC's training offering via a MOU that has been signed and is anticipated to take effect in July 2020. This allows the CPUC to utilize a certified trainer to deploy the SDP via online/web-based modules that will ensure full compliance within six months of the employee's initial appointment. The CPUC also plans to procure a Learning Management System (LMS) that will automate tracking of training taken by CPUC employees.

Finding No. 10 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

The CPUC did not provide sexual harassment prevention training to any of its 45 new supervisors within 6 months of their appointment. In addition, the CPUC did not provide sexual harassment prevention training to 82 of 95 existing supervisors every 2 years. This is the second consecutive time this has been a finding for CPUC.

Cause: There was a lack of adequate tracking and data system combined with a lack of accountability by leadership to ensure mandatory attendance. The CPUC has since acquired a vendor software program that allows for on-demand training and better tracking of completion and plans to procure a LMS that will automate tracking of training taken by CPUC employees.

Finding No. 14 – Incorrect Authorization of Pay Differential

The CRU found 1 error in the 13 pay differentials reviewed.

Cause: Lack of adequate staffing and training prevented a proper review of this pay differential.

Finding No. 15 – Incorrect Authorization of Out-of-Class Pay

The CRU found four errors in the CPUC's authorization of OOC pay.

Cause: A lack of adequate staffing and training prevented a proper review of salary determinations associated with OOC pay. In addition, there was not an adequate process in place to notify and terminate OOC pay to prevent over or under payment.

Finding No. 18 – Leave Activity and Correction Certification Forms Were Not Completed for All Leave Records

The CPUC failed to provide completed Leave Activity and Correction Certification forms for both units reviewed during the February 2019 pay period.

Cause: There was a lack of adequate staffing and training to new HRD staff. In addition, during staff transitions documentation was not completed or was lost.

Finding No. 19 – Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits

The CPUC did not provide leave reduction plans for 9 of the 60 employees reviewed whose leave balances significantly exceeded established limits.

Cause: The DLs are responsible for disseminating leave reduction plan forms to supervisors and managers. During the audit period, approximately 50 percent of the DLs were new to their positions and may not have received sufficient training. Adequate reminders and/or follow up with the DLs was not provided consistently to ensure compliance.

Finding No. 20 – Incorrect Application of State Service and Leave Transaction

The CRU found the following errors in the CPUC's state service transactions, which resulted in the employees earning state service credits and leave accruals to which they were not entitled.

Cause: During the audit period, there was limited staffing to properly process the transactions and new staff had not received full training. In addition, the errors can be due to incorrect reporting from Divisions and delayed disability cases.

Finding No. 21 – Department Does Not Maintain a Current Written Nepotism Policy

The CPUC does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Cause: During the audit period, there was a draft policy in the process of being approved. The Nepotism Policy has now been finalized, disseminated to all staff, and the CPUC has acquired a vendor software program which records and tracks attestations to the policy and staff with personal relationships.

Finding No. 23 – Performance Appraisals Were Not Provided to All Employees

The CPUC did not provide annual performance appraisals to 33 of 51 employees reviewed after the completion of the employee's probationary period.

Cause: A lack of adequate staffing in the Performance Management Unit caused a delay in HRD sending notifications to the DL who are responsible for disseminating the notifications to the supervisors and managers. During the audit period, approximately 50 percent of the DLs were new to their positions and may not have received sufficient training. In addition, HRD's tracking mechanisms had inconsistencies as the delivery dates for due appraisals varied between birth month and annual timing.

If you have further questions, please contact me at (916) 327-6777.

Sincerely,



Alice Stebbins
Executive Director

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