



COMPLIANCE REVIEW REPORT

CALIFORNIA STATE LANDS COMMISSION

Compliance Review Unit
State Personnel Board
April 27, 2020

TABLE OF CONTENTS

Introduction	1
Executive Summary	2
Background	3
Scope and Methodology.....	4
Findings and Recommendations	6
Examinations	6
Appointments	7
Equal Employment Opportunity	10
Personal Services Contracts.....	11
Mandated Training	13
Compensation and Pay.....	17
Leave	24
Policy and Processes.....	33
Departmental Response.....	39
SPB Reply	39

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 State Lands Commission's (Commission) 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
Appointments	Probationary Evaluations Were Not Provided for all Appointments Reviewed ¹
Equal Employment Opportunity	Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period
Personal Services Contracts	Unions Were Not Notified of Personal Services Contract
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Leadership and Development Training Was Not Provided for All Supervisors, Managers, or CEAs
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Pay Differentials
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

¹ Repeat finding. April 21, 2017, the Commission's Compliance Review Report identified missing probation reports in 3 of 22 appointment files reviewed.

Area	Finding
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
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

Established in 1938, the Commission manages four million acres of tide and submerged lands; and, the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. The Commission also monitors sovereign land, granted in trust by the California Legislature, to approximately 70 local jurisdictions which generally consist of prime waterfront lands and coastal waters. The Commission protects and enhances these lands and associated natural resources by issuing leases for use or development.

Through its actions, the Commission secures and safeguards the public's access rights to navigable waterways and the coastline. It also preserves irreplaceable natural habitats for wildlife, vegetation, and biological communities. Additionally, the Commission protects state waters from marine invasive species and prevents oil spills by providing protection

of the marine environment at all marine oil terminals and offshore oil platforms and production facilities in California.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the Commission's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes². The primary objective of the review was to determine if the Commission'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 Commission'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 Commission provided, which included examination plans, examination bulletins, job analyses, and scoring results. The Commission did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the Commission'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 Commission 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 Commission did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the Commission did not make any additional appointments during the compliance review period.

The Commission's appointments were also selected for review to ensure the Commission applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the Commission 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: monthly pay differentials, alternate range movements, and out-

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

of-class assignments. During the compliance review period, the Commission did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, and bilingual pay.

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

The Commission'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 Commission'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 Commission to provide a copy of their leave reduction policy.

The CRU reviewed the Commission's Leave Activity and Correction Certification forms to verify that the Commission 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 Commission'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 Commission's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the Commission employees

³If 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.

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

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

On April 14, 2020, an exit conference was held with the Commission to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the Commission's written response on April 7, 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, January 1, 2019, through September 30, 2019, the Commission conducted six examinations. The CRU reviewed four of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps.
Associate Process Safety Engineer	Open	Training and Experience (T&E) ⁴	5/16/19	4
Marine Safety Inspector	Open	T&E	Continuous	9
Marine Safety Specialist I	Open	T&E	Continuous	6
Senior Mineral Resources Engineer	Open	Qualification Appraisal Panel ⁵	1/14/19	9

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

The CRU reviewed four open examinations which the Commission administered in order to create eligible lists from which to make appointments. The Commission published and distributed examination bulletins containing the required information for all examinations. Applications received by the Commission 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 Commission conducted during the compliance review period.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen

⁴ 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.

⁵ 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.

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 Commission made 24 appointments. The CRU reviewed 10 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Attorney	Certification List	Permanent	Full Time	1
General Auditor III	Certification List	Permanent	Full Time	1
Marine Safety Specialist II	Certification List	Permanent	Full Time	1
Office Assistant (General)	Certification List	Permanent	Full Time	1
Petroleum Drilling Engineer	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Limited Term	Full Time	1

FINDING NO. 2 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Summary: The Commission did not provide 2 probationary reports of performance for 2 of the 10 appointments reviewed by the CRU, as reflected in the table below. This is a repeat finding from the prior Compliance Review Report, dated April 21, 2017.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Petroleum Drilling Engineer	Certification List	1	1
Office Assistant (General)	Certification List	1	1
Total		2	2

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

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

Cause: The Commission states that their Human Resources (HR) Office is very active in pursuing the completion of probation reports. However,

the Commission places the responsibility on the supervisor to ensure the reports are completed, which resulted in a lack of compliance.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses systemic corrections the department will implement to ensure conformity with Government Code section 19172. Copies of 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. 3 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Summary: The Commission provided evidence that one discrimination complaint related to a disability, medical condition, or denial of reasonable accommodation, was filed during the compliance review period of January 1, 2019, through December 31, 2019. This complaint investigation exceeded 90 days and the Commission

failed to provide written communication to the complainant regarding the status of the complaint.

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: The Commission states that they hired an external investigator to conduct the investigation and they were unaware of the 90-day notice requirement.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subd. (a). Copies of 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, January 1, 2019, through September 30, 2019, the Commission had 16 PSC's that were in effect. The CRU reviewed 10 of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Accounting Principals, Inc.	Accounting Services	9/25/19 - 6/30/20	\$49,000	Yes	No
Aspen Environmental Group	Architectural and Engineering Consultant	11/7/16 - 11/6/21	\$2,500,000	Yes	No
Curtain Maritime Corp	Dredging Services	9/3/19 - 3/1/20	\$1,487,920	Yes	No
Indoor Environmental Services	Service/Maintenance	7/1/19 - 6/30/22	\$7,041	Yes	No
Mari Rose Taruc	Training	5/23/19 - 6/5/19	\$1,100	Yes	No
QuickCaption, Inc.	Guides and Interpreters	7/1/19 - 6/30/20	\$5,000	Yes	No
Shandam Consulting, Inc.	IT Services	7/1/19 - 1/25/21	\$39,585	Yes	No
The Dore Group, Inc.	Real Estate Appraisal and Valuation Service	6/1/19 - 6/30/20	\$161,540	Yes	No
Tuolumne River Preservation Trust	Consulting Services	3/1/17 - 12/31/19	\$367,000	Yes	No

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Vertical Resources Mapping, Inc.	Aerial Photography Services	7/18/19 - 12/31/19	\$12,435	Yes	No

FINDING NO. 4 – Unions Were Not Notified of Personal Services Contract

Summary: The Commission did not notify unions prior to entering into 10 of 10 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 contracts are being proposed for work that their members could perform.

Cause: The Commission states that their Contracts Unit went through a complete staff turnover within the last two years and procedures were not fully developed and documented to ensure this critical step was adhered to for each applicable contract.

Corrective Action: It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics

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

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (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 Commission's mandated training program that was in effect during the compliance review period, October 1, 2017, through September 30, 2019. The

Commission's sexual harassment prevention training was found to be in compliance, while the Commission's ethics training and leadership training were found to be out of compliance.

FINDING NO. 5 – Ethics Training Was Not Provided for All Filers

Summary: The Commission provided ethics training to 136 of 136 existing filers. However, the Commission did not provide ethics training to 4 of 13 new filers within 6 months of their 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 Commission states that notification and reminder emails were sent to three of the four noncompliant filers; nonetheless, the three filers failed to complete their training within the first six months of appointment. The Commission further states that the fourth filer was non-compliant due to the HR Office's clerical error and failure to send the filer a training notification and reminder emails.

Corrective Action: Within 90 days of this report, the Commission must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3, subdivision (b). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 6 – Leadership and Development Training Was Not Provided for All Supervisors, Managers, or CEAs

Summary: The Commission provided leadership training to 1 of 1 CEA within 12 months of appointment. However, the Commission did not provide supervisor training to 1 of 3 new supervisors within 12

months of appointment. Additionally, the Commission did not provide biennial leadership training to 2 of 26 existing supervisors, managers, and/or CEAs.

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).)

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

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

Cause: The Commission states that their HR Office is actively pursuing the completion of the leadership and development trainings. However, the Commission places the responsibility on the employee to ensure the training is completed, which resulted in a lack of compliance.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors, managers, and CEAs are provided leadership and development training within twelve months of appointment, and that thereafter, they receive a minimum of 20 hours of leadership training biennially. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate⁶ 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 Commission made 10 appointments. The CRU reviewed the 10 appointments to determine if the Commission applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Attorney	Certification List	Permanent	Full Time	\$7,818
General Auditor III	Certification List	Permanent	Full Time	\$5,223
Marine Safety Specialist II	Certification List	Permanent	Full Time	\$6,418
Office Assistant (General)	Certification List	Permanent	Full Time	\$2,707
Petroleum Drilling Engineer	Certification List	Permanent	Full Time	\$10,803
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	\$6,530
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$3,692
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,124
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$5,933

⁶ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Manager I	Transfer	Limited Term	Full Time	\$5,917

FINDING NO. 7 – 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 Commission 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 Commission made four alternate range movements within a classification. The CRU reviewed the four alternate range movements to determine if the Commission applied salary regulations accurately and correctly processed each employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	Range A	Range B	Full Time	\$6,118
Attorney	Range A	Range B	Full Time	\$6,118
Personnel Technician I	Range A	Range B	Full Time	\$3,516
Staff Services Analyst (General)	Range A	Range B	Full Time	\$3,877

FINDING NO. 8 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found the following error in the Commission’s determination of employee compensation:

Classification	Description of Finding(s)	Criteria
Personnel Technician I	Incorrect Merit Salary Adjustment (MSA) date keyed.	Cal. Code Regs tit. 2, § 599.676 and 599.687

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220.)

Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

Severity: Very Serious. In one circumstance, the Commission failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules not in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The Commission acknowledges its Transaction Unit failed to key the correct MSA date and that the Personnel Action Request was not reviewed and approved by lead staff prior to processing.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that employees are compensated correctly. The Commission must establish an audit system to correct current compensation transactions as well as future transactions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, November 1, 2018, through July 30, 2019, the Commission issued pay differentials⁷ to 21 employees. The CRU reviewed 11 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Assistant Boundary Determination Officer	433	2%
Associate Mineral Resources Engineer	433	3%
Petroleum Drilling Engineer	433	2%
Petroleum Production Engineer	433	2%
Senior Engineer, Petroleum Structures (Specialist)	433	3%
Senior Mineral Resources Engineer	433	2%

⁷ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Senior Mineral Resources Engineer	433	2%
Senior Mineral Resources Engineer	433	3%
Senior Process Safety Engineer (Supervisor)	433	2%
Supervising Mineral Resources Engineer	433	2%
Supervising Mineral Resources Engineer	433	3%

FINDING NO. 9 – Incorrect Authorization of Pay Differentials

Summary: The CRU found 1 error in the 11 pay differentials reviewed:

Classification	Area	Description of Finding(s)	Criteria
Petroleum Production Engineer	Monthly Amount	The employee received the two percent longevity pay differential, but was eligible to receive three percent resulting in the employee being undercompensated.	Pay Differential 433

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 Commission failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR’s policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The Commission acknowledges that its Transaction Unit did not key a longevity pay increase for one employee due to the transaction staff failing to check their work to ensure accuracy prior to processing.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 433, and ensure that employees are compensated correctly and that transactions are keyed accurately. Copies of relevant documentation demonstrating that the corrective action has been implemented, and that the affected employee has been appropriately compensated, must be included with the corrective action response.

Out-of-Class Assignments and Pay

For excluded⁸ 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.)

⁸ “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.

During the period under review, November 1, 2018, through July 30, 2019, the Commission issued OOC pay to two employees. The CRU reviewed the two 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
Information Technology Specialist II	R01	Information Technology Manager I	1/1/19 – 4/30/19
Information Technology Supervisor II	S01	Information Technology Manager I	5/1/19 – 8/28/19

FINDING NO. 10 – Incorrect Authorization of Out-of-Class Pay

Summary: The CRU found two errors in the Commission’s authorization of OOC pay:

Classification	Area	Description of Findings	Criteria
Information Technology Specialist II	Out of Class Pay	Incorrect calculation of out-of-class pay resulting in the employee being undercompensated.	Pay Differential 91
Information Technology Supervisor II	Out of Class Pay	Incorrect calculation of out-of-class pay resulting in the employee being overcompensated.	Pay Differential 101

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

Cause: The Commission states that its Transaction Unit failed to correctly calculate and key OOC compensation for two employees because transaction staff were utilizing incorrect resources when processing their work.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differentials 91 and 101. Copies of relevant documentation demonstrating that the corrective action has been implemented (i.e., employee who was underpaid has been appropriately compensated, and employee who was overpaid has re-paid the overpayment) 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 days⁹ worked and paid absences,¹⁰ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine 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 Commission had 19 positive paid employees whose hours were tracked. The CRU reviewed 12 of those positive paid appointments to ensure

⁹ For example, two hours or ten hours counts as one day.

¹⁰ For example, vacation, sick leave, compensating time off, etc.

compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Time Base	Time Frame	Time Worked
Associate Governmental Program Analyst	Intermittent	7/1/18 – 6/30/19	938 hours
Attorney III	Intermittent	7/1/18 – 6/30/19	956 hours
Chief, Mineral Resources Management Division, State Lands Commission, CEA	Intermittent	7/1/18 – 6/30/19	960 hours
Environmental Program Manager I (Supervisory)	Intermittent	7/1/18 – 6/30/19	748 hours
Executive Assistant	Intermittent	7/1/18 – 6/30/19	960 hours
Office Technician (Typing)	Intermittent	7/1/18 – 6/30/19	741.5 hours
Petroleum Production Engineer	Intermittent	7/1/18 – 6/30/19	957 hours
Public Land Manager II	Intermittent	7/1/18 – 6/30/19	355.5 hours
Seasonal Clerk	Intermittent	4/26/19 – 9/30/19	770.5 hours
Staff Services Manager I	Intermittent	7/1/18 – 6/30/19	667 hours
Staff Services Manager II (Managerial)	Intermittent	7/1/18 – 6/30/19	179.5 hours
Student Assistant (Engineering and Architectural Sciences)	Intermittent	10/16/18 – 9/30/19	1,299 hours

FINDING NO. 11 – 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 Commission 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, July 1, 2018, through June 30, 2019, the Commission placed 22 employees on ATO. The CRU reviewed 14 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Date(s) of ATO	Amount of Time on ATO
Accounting Officer (Specialist)	11/14/18	2 hours
Assistant Boundary Determination Officer	11/14/18	2 hours
Assistant Boundary Determination Officer	4/18/19	6 hours
Associate Boundary Determination Officer	11/6/18 11/8/18 – 11/9/18 11/16/18	8 hours 12 hours 3 hours
Associate Mineral Resources Engineer	3/15/19	8 hours
Associate Property Appraiser	11/16/18	3 hours
Executive Secretary I	11/16/18	8 hours
Management Services Technician	11/14/18 – 11/16/18	6 hours
Management Services Technician	11/16/18	8 hours
Office Technician (Typing)	12/6/18 – 12/7/18	6 hours
Public Land Management Specialist II	11/14/18	1 hour
Senior Boundary Determination Officer (Specialist)	11/16/18	8 hours
Senior Environmental Scientist (Specialist)	11/9/18 11/13/18 – 11/15/18 11/26/18	10 hours 21 hours 4 hours

Classification	Date(s) of ATO	Amount of Time on ATO
Staff Services Analyst (General)	12/27/18	1 hour

FINDING NO. 12 – 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 Commission 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, April 1, 2019, through June 30, 2019, the Commission reported 19 units comprised of 681 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
April 2019	500	8	8	0
April 2019	503	4	4	0

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
April 2019	523	13	9	0
May 2019	500	8	8	0
May 2019	503	4	4	0
May 2019	523	13	9	0
June 2019	500	8	8	0
June 2019	503	4	4	0
June 2019	523	13	9	0

FINDING NO. 13 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The Commission kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

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.”¹¹ (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave

¹¹ 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.

balance that will be above the maximum amount¹² 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.)

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, 14 Commission employees exceeded the established limits of vacation or annual leave. The CRU reviewed 10 of those employees' leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Administrative Assistant I	C01	289	No
Assistant Manager, Land Operations	M01	185	Yes
Associate Mineral Resources Engineer	R09	22.5	Yes
Associate Process Safety Engineer	R09	131	Yes
CEA	M01	206	No
CEA	M01	347	No
CEA	M01	463.6	Yes
Petroleum Drilling Engineer	R09	205.4	No

¹² Excluded employees shall not accumulate more than 80 days.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Senior Mineral Resources Engineer	S09	417	Yes
Staff Services Manager I	S01	44.5	Yes
Total		2,311	

FINDING NO. 14 – Leave Reduction Plans Were Not Developed for Employees Whose Leave Balances Exceeded Established Limits

Summary: The Commission did not provide leave reduction plans for 4 of the 10 employees reviewed whose leave balances significantly exceeded established limits. Additionally, the Commission did not provide a general departmental policy addressing leave reduction.

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 Commission states that their HR Office is active in pursuing the completion of leave reduction plans. However, the Commission places the responsibility on the employee and their supervisor to ensure leave reduction plans are completed. Additionally, the Commission states that a general department policy was not created because of a lack of staffing in the HR Office.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place. In addition, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.742 and Human Resources Manual Section 2124. Copies of 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.¹³ (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.

¹³ Except as provided in California Code of Regulations, title 2, sections 599.609 and 599.776.1, subd. (b) , 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.

(*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹⁴ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, November 1, 2018, through July 30, 2019, the Commission had seven employees with non-qualifying pay period transactions. The CRU reviewed five transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	3
Qualifying Pay Period	Full Time	2

FINDING NO. 15 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the Commission ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (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

¹⁴ 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.

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. 16 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The Commission 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: The Commission states that a nepotism policy was not finalized due to lack of staffing in the HR Office.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 1204. Copies of relevant documentation demonstrating that the corrective action has been implemented 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.*)

FINDING NO. 17 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the Commission 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 Commission 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 60 permanent Commission 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 I (Specialist)	12/12/2018
Accountant Trainee	11/23/2018
Accounting Administrator I (Supervisor)	9/6/2018
Assistant Boundary Determination Officer	3/22/2018
Assistant Chief Counsel	7/14/2018
Assistant Manager, Land Operations	1/1/2018
Associate Boundary Determination Officer	10/1/2018
Associate Engineer, Petroleum Structures	1/16/2018
Associate Engineer, Petroleum Structures	10/1/2018
Associate Engineer, Petroleum Structures	11/9/2018
Associate Governmental Program Analyst	2/28/2018
Associate Mineral Resources Engineer	5/30/2018
Associate Process Safety Engineer	8/1/2018
Associate Process Safety Engineer	5/1/2018
Associate Property Appraiser	5/1/2018
Attorney	7/13/2018
Attorney	10/3/2018
Attorney III	2/17/2018
Environmental Program Manager I (Managerial)	11/30/2018
Marine Safety Specialist I	6/17/2018
Marine Safety Specialist I	3/3/2018
Marine Safety Specialist I	11/17/2018
Marine Safety Specialist I	5/15/2018
Marine Safety Specialist I	11/17/2018
Marine Safety Supervisor	7/31/2018
Mineral and Land Auditor Specialist IV (Specialist)	10/31/2018
Mineral Resources Inspector II	11/30/2018
Mineral Resources Inspector III	5/1/2018
Office Assistant (Typing)	12/12/2018

Classification	Date Performance Appraisals Due
Personnel Specialist	7/31/2018
Petroleum Production Engineer	11/18/18
Petroleum Reservoir Engineer State Lands Division	6/2/2018
Petroleum Reservoir Engineer State Lands Division	5/1/2018
Petroleum Reservoir Engineer State Lands Division	5/1/2018
Public Land Management Specialist I	7/18/2018
Public Land Management Specialist I	7/18/2018
Public Land Management Specialist I	7/21/2018
Public Land Management Specialist II	2/6/2018
Public Land Management Specialist II	6/7/2018
Public Land Management Specialist II	1/1/2018
Public Land Management Specialist III	2/6/2018
Public Land Management Specialist III	2/13/2018
Public Land Management Specialist III	4/1/2018
Public Land Management Specialist III	1/31/2018
Public Land Management Specialist IV	1/31/2018
Public Land Management Specialist IV	7/31/2018
Public Land Management Specialist IV	11/1/2018
Public Land Manager I	10/1/2018
Public Land Manager I	6/1/2018
Senior Boundary Determination Officer (Specialist)	2/2/2018
Senior Boundary Determination Officer (Specialist)	2/2/2018
Senior Environmental Scientist (Specialist)	6/20/2018
Senior Environmental Scientist (Specialist)	1/31/2018
Senior Environmental Scientist (Specialist)	8/12/2018
Senior Environmental Scientist (Supervisory)	7/1/2018
Senior Personnel Specialist	5/1/2018
Staff Services Analyst (General)	7/1/2018
Staff Services Manager I	11/7/2018
Supervising Boundary Determination Officer	11/1/2018

Classification	Date Performance Appraisals Due
Supervising Management Auditor	10/9/2018

FINDING NO. 18 – Performance Appraisals Were Not Provided to All Employees

Summary: The Commission did not provide annual performance appraisals to 22 of 60 employees reviewed after the completion of the employee’s probationary period. Additionally, the Commission did not provide performance appraisals in a timely manner to 18 of 60 employees reviewed.

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: The Commission states that their HR Office is very active in pursuing the completion of performance appraisals. However, the Commission places the responsibility on the supervisor to ensure the performance appraisals are completed, which resulted in a lack of compliance.

Corrective Action: Within 90 days of the date of this report, the Commission must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

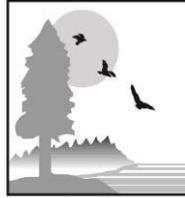
The Commission's response is attached as Attachment 1.

SPB REPLY

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

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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April 7, 2020

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

Subject: **Response to Audit Findings**

Dear Ms. Ambrose,

The State Lands Commission (Commission) appreciates the opportunity to respond to the State Personnel Board's (SPB) Compliance Review Report. The Commission regards the audit process with a high degree of respect and views this process as a productive collaborative effort with the SPB to ensure the Commission and its Human Resources (HR) office obtains its goal of full compliance with established requirements and best practices.

The following is the Commission's response to the deficiencies noted in the Compliance Review Report.

FINDING NO. 2 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Cause: The Commission's HR Office has a Probation Report tracking log which it uses to manually track notifications, reminders, and completion status. The HR Office notifies supervisors of the responsibility to complete Probation Reports within one month of appointment and manually sends reminder emails to the supervisor prior to each report due date. Additionally, the HR Office sends a monthly report of Probation Report non-compliance to our Executive Office. While the HR Office is very active in pursuing the completion of Probation Reports, it is the responsibility of the supervisor to ensure the reports are completed.

Response: The Commission has seen an increase in our completed Probation Reports since our last compliance review due to the implementation of task reminders and the Executive Office review of compliance; however, we recognize 100% Probation Report completion is our goal. The HR Office is researching an automated tracking and notification system that would

send additional reminder emails to supervisors, and we are in the beginning stages of identifying and implementing a data tracking and report system which will identify and disseminate Probation Report completion compliance or non-compliance so more emphasis can be placed on this requirement. The Commission's Executive Office will re-emphasize the importance of completing Probation Reports in management meetings.

FINDING NO. 3 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Cause: The Commission hired an external investigator to conduct the investigation and they were unaware of the 90-day notice requirement; however, once an inquiry was made by the Commission, the notice was provided to the complainant.

Response: The Commission implemented a tracking system and the EEO Officer will notify all internal and external investigators of the 90-day notice requirement to ensure the Complainant is notified in a timely matter. The EEO Officer will oversee this requirement to ensure it is met.

FINDING NO. 4 - Unions Were Not Notified of Personal Services Contracts

Cause: The Commission's Contracts Unit went through a complete staff turnover within the last two years and procedures were not fully developed and documented to ensure this critical step was adhered to for each applicable contract.

Response: The Commission's Contracts Unit took corrective action to ensure union notification compliance by re-training staff of the requirement to complete and save proof of union notification; developed a checklist to include 19132(b)(3) bargaining unit notification for personal services; and updated our Master Contract List to include a decision checkpoint for required bargaining unit notification.

FINDING NO. 5 – Ethics Training Was Not Provided for All Filers

Cause: The Commission's HR Office has an Ethics tracking log which it uses to manually track notifications, reminders, and completion status. The HR Office notifies filers of their responsibility to complete Ethics training within six months of appointment, or every two years post appointment, and manually sends reminder emails to the filers and their supervisors prior to the training due date. Notification and reminder emails were sent to three of the four non-complaint filers; however, despite these notifications and reminders, filers failed to complete their training within the first six months of appointment. One of the four filers was non-compliant due to the HR Office's clerical error and failure to send the filer a training notification and reminder emails.

Response: The HR Office is researching an automated tracking and notification system that would send additional reminder emails to filers and their supervisors, and we are in the beginning stages of identifying and implementing a data tracking and report system which will identify and disseminate Ethics training completion compliance or non-compliance so more emphasis can be placed on this requirement. The failure to send one filer notification of their requirement to complete the Ethics training was discussed with HR Office staff. The Commission's Executive Office will re-emphasize the importance of completing Ethics training in management meetings.

FINDING NO. 6 – Leadership Training and Development Was Not Provided for All Supervisors, Managers, or CEAs

Cause: The Commission’s HR Office has a “New Supervisor, Manager, and CEA” tracking log which it uses to manually track training notifications, reminders, and completion status. The HR Office manually sends staff members a training notification email shortly after appointment and manually sends reminder emails to the staff member prior to the training due date. While the HR Office is active in pursuing the completion of this training, it is the responsibility of the staff member to ensure the training is completed.

The Commission’s HR Office has a Leadership tracking log which it uses to manually track training completion status. The HR Office notifies staff members, upon appointment into a management classification, of the responsibility to complete Leadership training and manually sends periodic reminder emails to the staff member prior to the training due date. While the HR Office is active in pursuing the completion of this training, it is the responsibility of the staff member to ensure the training is completed.

Response: The HR Office is researching an automated tracking and notification system that would send additional reminder emails to staff and their supervisors, and we are in the beginning stages of identifying and implementing a data tracking and report system which will identify and disseminate Supervisor and Leadership training completion compliance or non-compliance so more emphasis can be placed on these requirements. The Commission’s Executive Office will re-emphasize the importance of completing Supervisor and Leadership training in management meetings.

FINDING NO. 8 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: The Commission’s Transaction Unit failed to key the correct MSA date and the Personnel Action Request (PAR) was not reviewed and approved by lead staff prior to processing. The Transaction Unit had a process in place to review and approve PARs prior to keying during this audit cycle; however, the process was temporarily not followed. The Transaction Unit caught and rectified this error during an internal review prior to the SPB Compliance Audit.

Response: The Commission discussed this error with the Transaction Unit staff member and they were reminded about the requirement to have all PARs reviewed and approved prior to processing.

FINDING NO. 9 – Incorrect Authorization of Pay Differentials

Cause: The Commission’s Transaction Unit missed keying a Longevity Pay increase for one staff member due to Transaction staff failing to check their work to ensure accuracy prior to processing.

Response: The Commission discussed this error with the Transaction staff member, and they were reminded about the importance of reviewing their work to ensure accuracy prior to processing.

FINDING NO. 10 – Incorrect Authorization of Out-of-Class Pay

Cause: The Commission's Transaction Unit failed to correctly calculate and key Out-of-Class Compensation for two staff members due to Transaction staff utilizing the incorrect resources when processing the work.

Response: The Commission discussed this error with the Transaction staff member and additional training was provided.

FINDING NO. 14 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits. Additionally, the SLC did not provide a general departmental policy addressing leave reduction.

Cause: The Commission's HR Office notified staff members and their supervisors in September 2018 of the requirement to submit a Leave Reduction Plan and provided reminder emails. While the HR Office is active in pursuing the completion of Leave Reduction Plans, it is the responsibility of the staff member and their supervisor to ensure plans are completed. Additionally, due to lack of staff in the HR Office, the Commission failed to create a general department policy addressing leave reduction.

Response: Due to additional staff member and supervisor reminder emails from the HR Office, the Commission has seen an increase in our 2019 completed Leave Reduction Plans. The HR Office is in the beginning stages of implementing a data tracking and report system which will identify and disseminate Commission leave maximum non-compliance so more emphasis can be placed on this requirement. Regardless, the Commission's Executive Office will emphasize the importance of compliance and the financial liability non-compliance places on the Commission in management meetings. Additionally, the HR Office has assigned the Excess Leave Reduction policy to a staff member to create.

FINDING NO. 16 – Department Does Not Maintain a Current Written Nepotism Policy

Cause: Due to lack of staff in the HR Office, the Commission failed to finalize our draft Nepotism policy.

Response: The HR Office will expedite its work on the draft Nepotism policy in order to finalize it in the near future.

FINDING NO. 18 – Performance Appraisals Were Not Provided to All Employees

Cause: The Commission's HR Office has a Performance Appraisal tracking log which it uses to manually track notifications, reminders, and completion status. The HR Office notifies supervisors manually via email of the responsibility to complete Performance Appraisals at least one-year after probation and manually sends reminder emails to the supervisor prior to the due date. Additionally, the HR Office sends a monthly report of Performance Appraisal completion non-compliance to our Executive Office. While the HR Office is very active in pursuing the completion of Performance Appraisals, it is the responsibility of the supervisor to ensure the appraisal is completed.

Response: The HR Office is researching an automated tracking and notification system that would send additional reminder emails to supervisors, and we are in the beginning stages of identifying and implementing a data tracking and report system which will identify and

disseminate Performance Appraisal completion compliance or non-compliance so more emphasis can be placed on this requirement. The Commission's Executive Office will re-emphasize the importance of completing Performance Appraisals in management meetings.

CONCLUSION

The Commission appreciated the opportunity to address the findings in this report and our proposed process changes for increasing compliance. We anticipate that the proposed changes will positively impact future outcomes.

Please let me know if we can provide you with any additional information. I can be reached at (916) 574-1912 or anne.kerri@slc.ca.gov.

Sincerely,

DocuSigned by:

Anne Kerri

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Anne Kerri, Personnel Officer
Human Resources Office