

COMPLIANCE REVIEW REPORT

CALIFORNIA WORKFORCE INVESTMENT BOARD

Compliance Review Unit
State Personnel Board
May 5, 2015

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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 authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) 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. The SPB conducts these reviews on a three-year cycle.

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Workforce Investment Board (CWIB) personnel practices in the areas of appointments and EEO from April 1, 2013, through March 31, 2014. There were no examinations conducted and no PSC's in effect during the compliance review period. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

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

- Red = Very Serious
- Orange = Serious
- Green = In Compliance

BACKGROUND

The CWIB is the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system and the alignment of the education and workforce investment systems to the needs of the 21st century economy and workforce. The State Board reports through its Executive Director to the Secretary of the Labor and Workforce Development Agency.

The members of the State Board are appointed by the Governor in conformity with Workforce Investment Act section 111(b) and Unemployment Insurance Code section 14012. State Board members are drawn from business, labor, public education, higher education, economic development, community organizations, and the State Legislature.

The State Board has an Executive Director that is appointed by the Governor and is an integral part of the State Board, contributing as a non-voting participant at State Board meetings and in Executive Committee meetings. Currently, the Executive Director is supported by a civil service staff of 14. The State Board staff helps implement the goals of the State Strategic Workforce Development Plan, plans and supports State Board meetings and the work of each of its committees, and carries out other duties as assigned by the State Board.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CWIB appointments and EEO program from April 1, 2013, through March 31, 2014. The primary objective of the review was to determine if CWIB's personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

On June 12, 2014, a preliminary survey was sent to CWIB to determine what information and documentation would be needed for the compliance review. On July 11, 2014, the CRU provided CWIB with a materials request form, requesting that CWIB gather and make available for CRU's review specific files and other documentation.

CWIB appointments were selected to ensure all appointment types, classifications, and levels were reviewed. The CRU examined the documentation that CWIB provided, which included certification lists, employment history records, correspondence and probationary evaluations.

The review of the CWIB'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 upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CWIB staff.

On April 22, 2015, an exit conference was held with the CWIB to explain and discuss the CRU's initial findings and recommendations. The CWIB was given until May 1, 2015, to submit a written response to the CRU's draft report. On April 24, 2015, the CRU received and carefully reviewed the response, and is included in this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Appointments

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

During the compliance review period, CWIB made two appointments. The CRU reviewed both of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Executive Assistant	Mandatory Reinstatement	Permanent	Full Time	1

FINDING NO. 1 – Probationary Evaluations Were Not Provided for All Appointments

Summary: The CWIB did not prepare, complete, and/or retain required probationary appraisals of performance for one of the two appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Governmental Program Analyst	Certification List	1	3

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

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

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully

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

Cause: The CWIB states that the assigned supervisor failed to prepare, complete, and/or retain the required probationary appraisals of performance.

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

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 equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

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

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the

committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CWIB contracts with the Employment Development Department (EDD) for assistance with human resources processing and utilizes EDD's EEO plan and policy. The CRU reviewed CWIB's EEO policies, procedures, and programs in effect during the compliance review period. In addition, the CRU interviewed appropriate staff.

FINDING NO. 2 – Equal Employment Opportunity Program Complied With Civil Service Laws and Board Regulations

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CWIB EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the CWIB. The CWIB also provided evidence of its efforts to promote EEO in its hiring and employment practices.

DEPARTMENTAL RESPONSE

The CWIB agrees with the SPB's finding and thanks the SPB for its review and report of the CWIB personnel practices in the areas of appointments and EEO from April 1, 2013, through March 31, 2014. The CWIB is committed to complying with the statutory and regulatory requirements related to the written appraisal of probationary employee performance three times during the probationary period. In order to achieve full compliance, the CWIB managers and supervisors will work with EDD human resources staff to review and receive training if necessary on EDD manual sections pertaining to probationary reports and the CWIB Chief of Operations will work with CWIB supervisors and managers to verify that the required probationary reports are completed timely and provided to EDD human resources for inclusion in the official personnel file for each employee.

SPB REPLY

Based upon the CWIB's written response, the CWIB will comply with CRU recommendations and findings. A corrective action plan has already been provided by the CWIB.

It is further recommended that the CWIB implement its corrective action plan to comply with the afore-stated recommendations within 60 days of the Executive Officer's approval.