



COMPLIANCE REVIEW REPORT

THE CALIFORNIA EXPOSITION AND STATE FAIR

Compliance Review Unit
State Personnel Board
August 11, 2017

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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 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. 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 Exposition and State Fair (Cal Expo) personnel practices in the areas of examinations, appointments, EEO, and PSC's from December 31, 2015, to November 30, 2016, and mandated training from November 30, 2014, to November 30, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Disability Advisory Committee Is Not Active	Very Serious

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied With Procedural Requirements	In Compliance
Mandated Training	Mandated Training Complied With Statutory Requirements	In Compliance

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

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

BACKGROUND

The Cal Expo’s mission is to create a state fair experience that reflects California’s industries, agriculture, diversity of people, traditions, and trends shaping its future.

Governed by an appointed Board of Directors, daily operations are managed by the Chief Executive Officer and a staff of approximately 68 permanent employees. More than 2,000 temporary employees are hired to operate the annual 17-day State Fair. The Cal Expo is a self-sufficient operation that receives no government funding and has an estimated economic impact of more than \$200 million.

The governing body of the Cal Expo is an 11-member board of directors, who must all be residents of California. Nine directors are appointed by the Governor, with one director appointed by each the Speaker of the Assembly and the Senate Rules Committee. Ex-Officio Members during the period of review were Governor Edmund G. Brown, Jr., Senator Dr. Richard Pan, Senator Anthony Cannella, Assembly member Kevin McCarty, and Assembly member Susan Eggman.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing Cal Expo examinations, appointments, EEO program, and PSC’s from December 31, 2015, to November 30, 2016, and mandated training November 30, 2014, to November 30, 2016. The primary objective of the review was to determine if Cal Expo personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of Cal Expo examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the Cal Expo provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the Cal Expo 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).

Cal Expo PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether Cal Expo justifications for the contracts were legally sufficient. The review was limited to whether Cal Expo practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the Cal Expo mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory and sexual harassment prevention training within statutory timelines.

On June 1, 2017, an exit conference was held with the Cal Expo to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the Cal Expo written response on July 10, 2017, 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

¹If 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.

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

During the period under review, the Cal Expo conducted one examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Maintenance and Operations Supervisor II	Departmental Promotional	Education and Experience ²	4/19/16	2

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

The CRU reviewed the Maintenance and Operations Supervisor II promotional examination, which the Cal Expo administered in order to create an eligible list from which to make appointments. The Cal Expo published and distributed examination bulletins containing the required information for all examinations. Applications received by the Cal Expo were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The Cal Expo notified applicants as to whether they

² In an education and experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

qualified to take the examination, and those applicants who met the minimum qualifications were also 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. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examination that the Cal Expo administered during the compliance review period. Accordingly, the Cal Expo fulfilled its responsibilities to administer the examination in compliance with civil service laws and board rules.

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, the Cal Expo made 103 appointments. The CRU reviewed 21 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Area Operations Supervisor, California State Fair	List Appointment	Permanent	Full Time	2
Exhibit Representative II	List Appointment	Permanent	Full Time	1
Exhibit Supervisor	List Appointment	Permanent	Full Time	1
Groundskeeper	List Appointment	Permanent	Full Time	1
Maintenance Mechanic	List Appointment	Permanent	Full Time	1
Satellite Wagering Facility Janitor	Mandatory Reinstatement	Permanent	Full Time	1
Police Officer	TAU	Temporary	Intermittent	1
State Fair Worker-Admissions Cashier	TAU	Temporary	Intermittent	10

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Groundskeeper	Transfer	Permanent	Full Time	3

For each of the six list appointments, the Cal Expo properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The CRU reviewed one mandatory reinstatement appointment. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The Cal Expo complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed 11 TAU appointments. When there is no employment list from which a position may be filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The Cal Expo complied with the rules and laws governing TAU appointments.

The CRU reviewed three Cal Expo appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Reg., tit. 2, § 425.) The Cal Expo verified the eligibility of each candidate to their appointed class.

However, the Cal Expo did not provide probation reports for all appointments as described in finding two.

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

Summary: The Cal Expo did not provide 11 probationary reports of performance for four of the 21 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments Missing Probation Reports	Total Number of Missing Probation Reports
Exhibit Representative II	List Appointment	1	2
Groundskeeper	Transfer	2	6
Maintenance Mechanic	List Appointment	1	3
Total		4	11

Criteria: The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as CalHR may require. (Gov. Code § 19172.) CalHR’s regulatory scheme provides that “a report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job.” (Code Reg., tit. 2, § 599.795.) Specifically, a written appraisal of performance shall be made to the department within 10 days after the end of each one-third portion of the probationary period. (*ibid.*) The Board’s record retention rules require that appointing powers retain all probationary reports. (Code Reg., titl. 2, § 26, subd. (a)(3).)

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 Cal Expo states that they make a good faith effort to notify and advise all supervisors and managers of the requirements for completing probationary evaluations for staff, including providing supervisors and managers with probationary evaluation forms and due dates for any employee who is on probation, however, not all probationary evaluations were completed.

Action: It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the Cal Expo 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 section 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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

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

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

members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the Cal Expo EEO program that was in effect during the compliance review period.

FINDING NO. 3 – Disability Advisory Committee Is Not Active

Summary: The Cal Expo does not have an active DAC. In Cal Expo’s previous compliance review report posted May 5, 2015, the SPB found that Cal Expo did not have an established DAC. Although the Cal Expo then established a DAC in May of 2015, a DAC meeting has not taken place since April of 2016.

Criteria: 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).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency’s ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The Cal Expo states that they have an established DAC, but the committee did not meet at the departmental level during the CRU review period due to staff retention issues.

Action: The Cal Expo must continue to take immediate steps to ensure the reestablishment of the DAC, comprised of members who have disabilities or who have an interest in disability issues. The Cal Expo must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later

than 30 days from the date of the SPB Executive Officer’s approval of these findings and recommendations.

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 Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

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

During the compliance review period, the Cal Expo had two PSC’s that were in effect and subject to the Department of General Services (DGS) approval. The CRU reviewed both of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Exclusive Tent Rentals, Inc.	Service/Maintenance	5/1/2016-8/10/2017	\$132,693.10	Yes
Holt of California	Service/Maintenance	1/1/2016-12/31/2019	\$383,000.00	Yes

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC’s reviewed was \$515,693.00. It was beyond the scope of the review to make conclusions as to whether the Cal Expo justifications for the contract were legally sufficient. For all PSC’s reviewed, the Cal Expo provided specific and detailed factual information in the written justifications as to how each of the two contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the Cal Expo PSC’s complied with civil service laws and board rules.

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 California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component,

the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the Cal Expo's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The Cal Expo provided ethics training to its three new filers within six months of appointment and semiannual ethics training to its one existing filers during two-year calendar year period commencing in 2014. The Cal Expo also provided supervisory training to its six new supervisors within 12 months of appointment. In addition, the Cal Expo provided sexual harassment prevention training its 13 new supervisors within six months of appointment, and sexual harassment prevention training to its eight existing supervisors every two years. Thus, the Cal Expo complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The Cal Expo's written response is attached as Attachment 1.

SPB REPLY

Based upon the Cal Expo's written response, the Cal Expo will comply with the CRU recommendations and findings, and provide the CRU with corrective action plans for findings two and three.

It is further recommended that the Cal Expo continue to comply with the afore-stated recommendations and submit to the CRU a written report of compliance within 60 days of the SPB's Executive Officer's approval of this report.



July 10, 2017

Ms. Nirmeth Paddi
Policy and Compliance Review Unit
State Personnel Board
801 Capitol Mall
Sacramento, California 95814

Ms. Paddi:

The California Exposition & State Fair (Cal Expo) is submitting its departmental response as requested in the Compliance Review Report by the State Personnel Board (SPB).

Cal Expo acknowledges the findings in the 2017 SPB Compliance Review Report. Cal Expo has taken steps to address and correct all finding as outlined below.

Probationary Evaluations Were Not Provided for all Appointments Reviewed

Cal Expo makes a good faith effort to notify and advise all supervisors and managers of the requirements of completing probationary evaluations. Supervisors and managers are provided the forms and due dates of probationary evaluations of their employees. Cal Expo Human Resources Office (HRO) does use a tracking system that has improved collection of probationary reports since the last compliance review. Cal Expo HRO will continue to be diligent in the efforts to collect all probe reports timely.

To further educate Cal Expo staff, over the next year, the HRO plans on providing best hiring practices seminars that will include the importance and legal requirements of completing the probationary evaluations.

DAC was not Active

Cal Expo has an established DAC; however, the committee did not convene during the SPB audit review period. During the audit period Cal Expo hosted the SDAC meetings but did not meet at the departmental level.

Cal Expo HRO will continue to be diligent in recruitment efforts and meet with standing members regularly. Since the compliance review the DAC has met and has a schedule for the rest of 2017.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anna McKowen".

Anna McKowen, Human Resources Director