COMPLIANCE REVIEW REPORT

CALIFORNIA STATE TRANSPORTATION AGENCY

Compliance Review Unit
State Personnel Board
March 6, 2019

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INTRODUCTION

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

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

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

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

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California State Transportation Agency (CalSTA)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes[1]. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Written Justification Was Not Provided For All Personal Services Contracts
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed
Leave	Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Leave	Departmental Leave Reduction Policy Was Not Developed
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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

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

BACKGROUND

The CalSTA develops and coordinates transportation policies and programs to achieve the state's mobility, safety, and environmental sustainability objectives. The CalSTA also provides necessary cabinet-level attention and focus to coordinate the policies and programs emanating from the following transportation-related entities: Department of Transportation, California Transportation Commission, High-Speed Rail Authority, Department of Motor Vehicles, New Motor Vehicle Board, California Highway Patrol, and Board of Pilot Commissioners. In addition to the aforementioned entities, the Office of Traffic Safety (OTS) is an operational transportation-related entity that resides within the CalSTA Office of the Secretary. The OTS develops the California Highway Safety Plan. The plan uses available state and federal resources to identify and address major traffic safety problems throughout the state.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CalSTA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes[2]. The primary objective of the review was to determine if CalSTA 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.

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

A cross-section of the CalSTA'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 CalSTA provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CalSTA did not conduct any permanent withhold actions during the compliance review period.

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

The CalSTA's appointments were also selected for review to ensure the CalSTA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CalSTA provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. During the compliance review period, the CalSTA did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, or out-of-class assignments.

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

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

The CalSTA's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory training and sexual harassment prevention training within statutory timelines.

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

The CRU reviewed the CalSTA's Leave Activity and Correction certification forms to verify that the CalSTA 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 CalSTA'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 CalSTA's employee's 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. The CalSTA did not authorize Administrative Time Off (ATO). (Additionally,) the CalSTA did not track any temporary intermittent employees by actual time worked during the compliance review period.

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

On Wednesday, January 23, 2019, an exit conference was held with the CalSTA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CalSTA's written response on Friday February 8, 2019, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

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

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

During the period under review, August 1, 2017 through July 31, 2018, the CalSTA conducted 2 examinations. The CRU reviewed both of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA)	Open	Statement of Qualifications (SOQ)[4]	11/27/17	20
CEA	Open	SOQ	03/09/18	17

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

The CRU reviewed two open examinations which the CalSTA administered in order to create eligible lists from which to make appointments. The CalSTA published and distributed examination bulletins containing the required information for all examinations. Applications received by the CalSTA were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the

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

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 CalSTA 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.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the period under review, April 1, 2017 through March 31, 2018, the CalSTA made 21 appointments. The CRU reviewed seven of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA	Certification List	CEA	Full Time	1
Senior Program Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager I (Specialist)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Information Officer I	Transfer	Permanent	Full Time	1

FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules

The CalSTA measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the four list appointments reviewed, the CalSTA ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected

candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed three CalSTA 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 Regs., tit. 2, § 425.) The CalSTA verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the CalSTA initiated during the compliance review period. Accordingly, the CRU found that the CalSTA's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid*.) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the Director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

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

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules

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 CalSTA 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. In addition, the CalSTA has an established DAC which reports to the Director on issues affecting persons with disabilities. The CalSTA also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with disabilities. Accordingly, the CalSTA EEO program complied with civil service laws and Board rules.

Personal Services Contracts

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

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

During the period under review, August 1, 2017 through July 31, 2018, the CalSTA had five PSC's that were in effect. The CRU reviewed all five of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount
Mary O'Hara-Devereaux, Ph.D	Speaking Engagement	08/14/17-08/31/17	$15,000
Jim Hedlund	Speaking Engagement	08/18/17-08/31/17	$1,200
Vertiba	Training	10/02/17-12/31/17	$8,405
Nelson/Nygaard Consulting Associates, Inc.	Consulting	02/28/17-05/30/19	$199,923
Kimley Horn and Associates	Consulting	06/04/18-12/31/18	$49,906

FINDING NO. 4 – Written Justification Was Not Provided for All Personal Services Contracts

Summary: The CalSTA did not properly document the reasons why the following two contracts satisfied Government Code section 19130, subdivision (b).

Vendor	Services	Contract Amount
Jim Hedlund	Speaking Engagement	$1,200
Vertiba	Training	$8,405

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

Severity: Serious. Without properly documenting the reasons why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not substantiate that the department's PSC's complied with current procedural requirements.

Cause: The CalSTA states that staff preparing the PSC's failed to follow procedures. Although there existed ample justification for the PSC's, it was not documented and included in the contract files.

Action: It is the contracting department's responsibility to properly document the reasons why a PSC satisfies one or more conditions specified in Government Code section 19130. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalSTA submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19130. Copies of any relevant documentation should be included with the plan.

FINDING NO. 5 – Unions Were Not Notified of Personal Services Contracts

Summary: The CalSTA did not notify unions prior to entering into five of five PSC's.

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

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

Cause: The CalSTA states that it differed from the SPB in interpreting Government Code section 19132, subdivision (b)(1) by presuming that, because there were no "state employees who perform the type of work to be contracted," there were no representative organizations to notify.

Action: It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalSTA submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of

Government Code section 19132 and AB 906. Copies of any relevant documentation should be included with the plan.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

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

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as

selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid*.) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

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

FINDING NO. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CalSTA did not provide sexual harassment prevention training to two of four existing supervisors every two years.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

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

Cause: The CalSTA states that during the period reviewed, CalSTA underwent a change of personnel in the positions of Administration and Finance Manager and OTS Deputy Director of Technology and Administration. During the transition, the scheduling of sexual harassment prevention training was inadvertently overlooked among the other high-priority areas requiring attention. Once CalSTA realized the mistake and was able to schedule the training, the two-year timeframe had passed.

Action: The CalSTA must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed.

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

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate[5] upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, April 1, 2017 through March 31, 2018, the CalSTA made 21 appointments. The CRU reviewed seven of those appointments to determine if the CalSTA applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
CEA	Certification List	CEA	Full Time	$7,616
Senior Program Analyst (Specialist)	Certification List	Permanent	Full Time	$7,604
Staff Services Analyst	Certification List	Permanent	Full Time	$3,977
Staff Services Manager I (Specialist)	Certification List	Permanent	Full Time	$6,287
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	$5,275
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	$5,274
Information Officer I	Transfer	Permanent	Full Time	$4,784

[5] "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

FINDING NO. 7 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the seven salary determinations that were reviewed. The CalSTA 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.

Leave

Leave Auditing and Timekeeping

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

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, February 1, 2018 through April 30, 2018, the CalSTA reported three units comprised of 71 active employees during the February 2018 pay period, three units comprised of 71 active employees during the March 2018 pay period, and three units comprised of 68 active employees during the April 2018 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
March 2018	006	15	15	0
April 2018	005	14	14	0
April 2018	008	23	23	0

FINDING NO. 8 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: The CalSTA provided documentation demonstrating that they currently administer an effective monthly internal audit process to verify that all leave input into their leave accounting system was keyed accurately and timely. After reviewing three units' leave records over two pay periods, it was determined that CalSTA correctly keyed all leave types accrued/earned or used, and corrected any identified errors in the leave accounting system in a timely manner.

However, the CalSTA failed to provide completed Leave Activity and Correction Certification forms for three out of three units reviewed during the months of March and April 2018 pay period.

Criteria: In accordance with California Code of Regulations, title 2, section 599.665, departments are responsible for maintaining accurate and timely leave accounting records for their employees. In an effort to ensure departmental compliance, CalHR mandates that departments' audit processes include the comparison of "what has been recorded in the leave accounting system as accrued/earned or used by each employee to their attendance record for the pay period" (CalHR Online Manual Section 2101). CalHR also directs departments to identify and record all leave errors found using a Leave Activity and Correction Certification form (*Ibid.*). Moreover, CalHR requires that departments certify that all leave records for the unit/pay period identified on the certification form have been reviewed regardless of whether errors were identified.

Severity: Non-serious or Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: The CalSTA states that the Senior Personnel Specialist at the Department of Transportation (Caltrans) who performs all of CalSTA's administrative duties related to personnel uses a monthly Reconciliation Report generated by Caltrans' human resources/time

reporting system, Staff Central, to reconcile staff leave with the State Controller's Office leave record. The Senior Personnel Specialist was unaware of the existence of the Leave Activity and Correction Certification Form and the requirement to use it.

Action: The CalSTA must take appropriate steps to ensure that their monthly internal audit process was documented.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CalSTA must incorporate completion of Leave Activity and Correction Certification forms for all leave records reviewed even when errors are not identified or corrected.

Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, "the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than" the established limit as stipulated by the applicable bargaining unit agreement[6]. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the "employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days." (Cal. Code Regs., tit. 2, § 599.738).

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

[6] For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

As of December 2017, 11 CalSTA employees exceeded the established limits of vacation or annual leave. The CRU reviewed eight 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 II	R01	173.5	No
CEA	M01	376	No
Deputy Secretary for Policy Coordination, CSTA	E99	353.5	No
Director, California Office of Traffic Safety	E99	611	No
Information Technology Specialist I	R01	590.25	No
Staff Services Manager I	S01	155	No
Staff Services Manager II	M01	205.75	No
Undersecretary, CalSTA	E99	167	No
Total		2,632	

FINDING NO. 9 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits

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

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

According to CalHR Online Manual Section 2124, "it is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees' leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant 'over-the-cap' leave balances have a leave reduction plan in place and are actively reducing hours".

Severity: Non-serious or 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 CalSTA states that although it operated under an outdated policy developed when the agency was formerly the Business, Transportation and Housing Agency, CalSTA management overlooked ensuring the existence of a leave plan for every employee with vacation or annual leave hours over the established limits.

Action: The CalSTA must take appropriate steps to ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CalSTA must establish a policy and plan to address leave reduction efforts.

FINDING NO. 10 – Departmental Leave Reduction Policy Was Not Developed

Summary: The CalSTA did not develop and communicate general departmental leave reduction policy, procedures, and practices.

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

According to CalHR Online Manual Section 2124, "it is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees' leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant 'over-the-cap' leave balances have a leave reduction plan in place and are actively reducing hours".

Severity: Non-serious or 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 CalSTA states that it incorrectly operated under an outdated policy developed when the agency was formerly the Business, Transportation and Housing Agency.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalSTA submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.742 and CalHR Online Manual Section 2124. Copies of any relevant documentation should be included with the plan.

State Service

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service[7] (Cal. Code Regs., tit. 2, § 599.608).

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

For each additional qualifying monthly pay period as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated (Cal. Code Regs., tit. 2, § 599.739). On the first day following a qualifying monthly pay period, excluded employees[8] 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, April 1, 2017 through March 31, 2018, the CalSTA had one employee with two non-qualifying pay period 715 transactions[9]. The CRU reviewed both 715 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

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

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

[9] 715 transaction code is used for: temporary leaves of 30 calendar days or less (per SPB Rule 361) resulting in a non-qualifying pay period; used for qualifying a pay period while on NDI; used for qualifying a pay period while employee is on dock and furlough.

Type of 715 Transaction	Time base	Number Reviewed
Non-Qualifying	Full-Time	2

FINDING NO. 11 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to these policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (CalHR Online Manual Section 1204).

FINDING NO. 12 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the CalSTA's nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the CalSTA's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CalSTA's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions as outlined in CalHR's Online Manual Section 1204.

Workers' Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under Workers' Compensation Law. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness (Labor Code, § 5401).

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

FINDING NO. 13 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the CalSTA's workers' compensation process that was in effect during the compliance review period, the CRU verified that the CalSTA provides notice to their employees to inform them of their rights and responsibilities under CA workers' compensation law.

Performance Appraisals

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

The CRU selected 17 permanent CalSTA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Accountant I	07/01/17
Accountant I	07/01/17
Accountant I	07/01/17
Accounting Officer	07/01/17
Associate Accounting Analyst	07/01/17
Associate Governmental Program Analyst	05/16/17
Associate Governmental Program Analyst	03/14/17
Associate Governmental Program Analyst	07/01/17
Associate Governmental Program Analyst	07/01/17
Associate Governmental Program Analyst	07/01/17
Associate Governmental Program Analyst	07/01/17
Executive Assistant	07/01/17
Executive Secretary II	02/01/17
IT Specialist I	12/01/17
Management Services Technician	07/01/17
Staff Services Manager I	01/26/17
Staff Services Manager II	09/05/17

In reviewing the CalSTA's performance appraisals policies and processes, the CRU determined the following:

FINDING NO. 14 – Performance Appraisals Were Not Provided to All Employees

Summary: The CalSTA did not provide performance appraisals to 17 of 17 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

Criteria: Departments are required to "prepare performance reports and keep them on file as prescribed by department rule" (Gov. Code § 19992.2). 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.

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 CalSTA states that it lacked a system to notify appropriate supervisors and managers of the need to complete the requisite performance appraisals.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalSTA submit to the SPB a written corrective action plan that 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 any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The CalSTA's response is attached as Attachment 1.

SPB REPLY

Based upon the CalSTA's written response, the CalSTA will comply with the CRU recommendations and findings and provide the CRU with an action plan. It is further recommended that the CalSTA comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

Gavin Newsom
Governor

Brian C. Annis
Secretary

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February 8, 2019

Suzanne M. Ambrose, Executive Officer
State Personnel Board
801 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Ambrose:

The California State Transportation Agency (CalSTA), including the Office of Traffic Safety (OTS), submits this letter in response to the State Personnel Board (SPB) Compliance Review Unit's (CRU) compliance review. CalSTA appreciates the CRU's professionalism during the review, as well as their identification of opportunities for improvement. As requested, CalSTA's identification of causes for each of the CRU's findings are as follows.

Finding No. 4 – Written Justification Was Not Provided for All Personal Services Contracts

CRU Summary:
The CalSTA did not properly document the reasons why [two] contracts satisfied Government Code section 19130, subdivision (b).

CalSTA Cause/Response:
Staff preparing the Personal Service Contracts (PSC) failed to follow procedures. Although there existed ample justification for the PSCs, it was not documented and included in the contract files.

Henceforth, CalSTA will update its relevant procedures and checklists to ensure PSCs include all necessary documentation prior to being routed for signature/approval. Further, training will be provided to CalSTA staff creating and processing PSCs to ensure conformity with Government Code section 19130, subdivision (b).

Finding No. 5 – Unions Were Not Notified of Personal Services Contracts

CRU Summary:
The CalSTA did not notify unions prior to entering into five of the five PSCs.

CalSTA Cause/Response:
CalSTA differed from the SPB in interpreting Government Code section 19132, subdivision (b)(1) by presuming that, because there were no "state employees who perform the type of work to be contracted," there were no representative organizations to notify. CalSTA now is aware of the SPB's interpretation that, because the intent of the notification is (a) to allow affected unions and/or organizations to challenge the intended contracts before the SPB, and (b) to ensure transparency and to build and maintain a strong civil service system, as envisioned in the State Constitution, an alternative is for CalSTA to notice all unions to ensure compliance with the statute. It is SPB's determination that CalSTA cannot conclude that no union exists to represent employees that perform or could perform the services proposed and thereby not provide any notice of CalSTA's intention to contract for personal services.

Consequently, CalSTA will update its relevant procedures and checklists to ensure that a PSC shall not be executed until CalSTA has either (a) notified all organizations that represent state employees who perform the type of work to be contracted, or (b) notified all organizations that represent all state employees if it appears that there are no state employees who perform, or who could perform, the type of work to be contracted. Additionally, the procedures and checklists will ensure PSCs include all necessary documentation prior to being routed for signature/approval. Further, CalSTA will ensure all CalSTA staff creating and processing PSCs are trained to ensure conformity with Government Code section 19132, subdivision (b)(1)

Finding No. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

CRU Summary:
The CalSTA did not provide sexual harassment prevention training to two of four existing supervisors every two years.

CalSTA Cause/Response:
During the period reviewed, CalSTA underwent a change of personnel in the positions of Administration and Finance Manager and OTS Deputy Director of Technology and Administration. During the transition, the scheduling of sexual harassment prevention training was inadvertently overlooked among the other high-priority areas requiring attention. Once CalSTA realized the mistake and was able to schedule the training, the two-year timeframe had passed.

To prevent this oversight from reoccurring, CalSTA will establish a schedule for sexual harassment prevention training, as well as other mandatory periodic training, and will develop a system whereby timely notification is made to afford ample time to schedule the training within the requisite timeframes.

Finding No. 8 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

CRU Summary:
The CalSTA failed to provide completed Leave Activity and Correction Certification forms for three out of three units reviewed during the months of March and April 2018 pay period.

CalSTA Cause/Response:
The Senior Personnel Specialist at the Department of Transportation (Caltrans) who performs all of CalSTA's administrative duties related to personnel uses a monthly Reconciliation Report generated by Caltrans' human resources/time reporting system, Staff Central, to reconcile staff leave with the State Controller's Office leave record. The Senior Personnel Specialist was unaware of the existence of the Leave Activity and Correction Certification Form and the requirement to use it.

CalSTA will direct Caltrans' Human Resources Manager to incorporate the Leave Activity and Correction Certification Form into its leave audit process.

Finding No. 9 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits

CRU Summary:
The CalSTA did not provide leave reduction plans for the 8 of 8 employees reviewed whose leave balances significantly exceeded established limits.

CalSTA Cause/Response:
Although CalSTA operated under an outdated policy developed when the agency was formerly the Business, Transportation and Housing Agency, CalSTA management overlooked ensuring the existence of a leave plan for every employee with vacation or annual leave hours over the established limits.

CalSTA will implement an annual leave reduction plan for staff with excess leave balances and will monitor excess leave balances in comparison to the plans.

Finding No. 10 – Departmental Leave Reduction Policy Was Not Developed

CRU Summary:
The CalSTA did not develop and communicate general departmental leave reduction policy, procedures, and practices.

CalSTA Cause/Response:
CalSTA incorrectly operated under an outdated policy developed when the agency was formerly the Business, Transportation and Housing Agency.

CalSTA will develop a new leave reduction policy for distribution and implementation to all CalSTA employees.

Finding No. 14 – Performance Appraisals Were Not Provided to All Employees

CRU Summary:
The CalSTA did not provide performance appraisals to 17 of 17 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

CalSTA Cause/Response:
CalSTA lacked a system to notify appropriate supervisors and managers of the need to complete the requisite performance appraisals.

In 2018, CalSTA acknowledged this oversight and completed performance appraisals of all permanent employees. To ensure future compliance with Government Code section 19992.2 and California Code of Regulations section 599.798, CalSTA will conduct the appraisals each July, and will develop and implement a tracking system to monitor the completion of the performance appraisals.

If you need additional information regarding this response, please do not hesitate to contact Minerva Anguiano, CalSTA Administration and Finance Manager, at (916) 324-7514.

Sincerely,

BRIAN C. ANNIS
Secretary

cc: Rhonda L. Craft, Director, Office of Traffic Safety