



COMPLIANCE REVIEW REPORT

COMMISSION ON STATE MANDATES

Compliance Review Unit
State Personnel Board
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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 comply 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 not monitored on a consistent, 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 Commission on State Mandates' (CSM) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	EEO Officer's Duty Statement Does Not Reflect EEO Duties
Personal Services Contracts	Personal Service Contract Did Not Comply With Procedural Requirements
Personal Service Contracts	Union Was Not Notified of Personal Services Contract
Mandated Training	Mandated Training Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Salary Determination Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Policy Not Provided to New Employees by the End of First Pay Period
Policy	Workers' Compensation Notice to Employee Poster Does Not Meet Posting Requirements
Policy	Performance Appraisals Were Not Provided to All Employees

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

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

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

BACKGROUND

The CSM is a quasi-judicial body whose statutory responsibilities are: to adjudicate test claims of local governments that allege the existence of reimbursable state-mandated programs and determine any costs required to be reimbursed; to hear and decide claims alleging that the State Controllers' Office has incorrectly reduced payments to local governments for reimbursement claims; to hear and decide requests for mandate redetermination alleging that the state's liability for a mandate has been modified based on a subsequent change in law; and to determine the existence of significant financial distress for applicant counties seeking to reduce their General Assistance Aid payments.

The Commission is composed of seven members: The State Controller, State Treasurer, Director of the Department of Finance, Director of the Office of Planning and Research, a public member with experience in public finance, and two local elected officials.

The CSM's Vision is to render timely and sound quasi-judicial decisions in compliance with article XIII B, section 6 of the California Constitution, resolve disputes regarding reimbursement for state-mandated local programs, and relieve unnecessary congestion of the courts.

The CSM's Mission is to fairly and impartially hear and determine matters filed by state and local government; resolve complex legal questions in a deliberative and timely manner; and produce clear, well-reasoned, and lawful decisions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CSM's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes² when applicable. The primary objective of the review was to determine if CSM personnel practices, policies, and procedures complied with state civil service laws and board regulations, bargaining unit agreements, CalHR policies, and

² Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.\ptf433e45

guidelines, CalHR delegation agreements, and to recommend corrective action where deficiencies were identified.

The CSM did not conduct any examinations or permanent withhold actions during the compliance review period.

A cross-section of the CSM's appointments were selected to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CSM 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 CSM did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CSM did not make any additional appointments during the compliance review period.

The CSM's appointments were also selected for review to ensure the CSM applied salary regulations accurately and correctly processed employee's compensation and pay. The CRU examined the documentation that the CSM provided, which included employee's 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 CSM did not issue or authorize alternate range movements, arduous pay, bilingual pay, out of class pay, red circle rates, hiring above minimum (HAM) requests, or any other monthly pay differential.

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

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

The CSM'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 and managers were provided supervisory and sexual harassment prevention training within statutory timelines.

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

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

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

On September 24, 2018, an exit conference was held with the CSM to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CSM's written response on October 17, 2018, which is attached to 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 period under review, December 1, 2016, through November 30, 2017, the CSM made one appointment via eligible list and two appointments via mandatory reinstatement. The CRU reviewed the appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney III	Mandatory Reinstatement	Permanent	Full Time	2

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

The Department of General Services (DGS) administers CSM’s appointments. On behalf of the CSM, the DGS measured the applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For the list appointment reviewed, the DGS ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidate was appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CSM made two appointments via mandatory reinstatement. 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 CSM complied with the rules and laws governing mandatory reinstatements.

The CRU found no deficiencies in the appointments that the CSM initiated during the compliance review period. Accordingly, the CRU found that the CSM'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; 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).)

FINDING NO. 2 – EEO Officer's Duty Statement Does Not Reflect EEO Duties

Summary: The CSM's Assistant Executive Director also serves as the EEO Officer. Although the CSM provided documentation demonstrating the EEO Officer's participation in some EEO responsibilities, the Assistant Executive Director's duty statement provided does not contain EEO Officer related duties.

Criteria: 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.)

Severity: Very Serious. The EEO Officer is responsible for developing, implementing, coordinating, and monitoring an effective EEO program. Due to the substantial responsibilities held by each department's EEO Officer, it is essential that each department, dedicate sufficient staff resources to successfully maintain an effective EEO program.

Cause: The CSM states that there is no requirement that EEO duties be specified in the EEO Officer's duty statement.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSM submit to the CRU a written report of compliance including an updated duty statement for the EEO Officer.

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 period under review, December 1, 2016, through November 30, 2017, the CSM had one PSC that was in effect. The CRU reviewed the contract which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Daniel P. Feldhaus, CSR, Inc.	Certified Shorthand Reporting Services	7/1/17 – 6/30/18	\$4,995	No

FINDING NO. 3 – Personal Services Contract Did Not Comply with Procedural Requirements

Summary: Although the CSM provided a copy of the executed PSC for review, the department provided no justification identifying the contract as permissible in accordance with Government Code section 19130, subdivision (a) or subdivision (b).

Criteria: Government Code section 19130 establishes standards for the use of PSC's including conditions that must be met in order for the PSC to be permissible. Whenever an agency executes a PSC under Government Code section 19130, subdivision (b), the department must document 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 19130, subdivision b. The agency shall also maintain the written justification for the duration of the contract and any extensions of the contract.

Severity: Serious. Specific and detailed written justifications must be submitted with each PSC in order to ensure that the conditions established in Government Code section 19130 are met, including services not being available within civil service

Cause: The CSM states that because the PSC was executed using the STD 210 short form contract, which doesn't contain an area to indicate a justification, staff reasonably assumed that the PSC was exempt from the requirements of Government Code section 19130.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CSM 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 19131. Copies of any relevant documentation should be included with the plan.

FINDING NO. 4 – Union Was Not Notified of Personal Services Contract

Summary: The CSM did not notify state employee union prior to entering into the PSC.

Criteria: Per AB 906, effective January 1, 2014, all departments must notify unions of the contracted services before entering into a PSC. Additionally, Government Code section 19132 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 PSC’s in order to ensure that current state employees who perform the type of work to be contracted are given priority.

Cause: The CSM states that they relied on DGS as subject matter experts so were not aware that the PSC required union notification.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CSM 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 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).)

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.

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

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The CSM provided semiannual ethics training to its three existing filers during two-year calendar year period commencing in 2015. The CSM did not have any new supervisors requiring supervisory training within 12 months of appointment. In addition, the CSM provided sexual harassment prevention training to its three existing supervisors every two years. Thus, the CSM complied with mandated training requirements within statutory timelines.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Reg., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate⁴ upon appointment depending on the appointment type, and the employee's state employment pay history and tenure.

During the period under review, December 1, 2016, through November 30, 2017, the CSM made three appointments. The CRU reviewed the three appointments to determine if the CSM applied salary regulations accurately and correctly processed employees' compensation transactions. These appointments are listed below:

⁴ "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).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,784
Attorney III	Mandatory Reinstatement	Permanent	Full Time	\$10,820
Attorney III	Mandatory Reinstatement	Permanent	Full Time	\$10,763

FINDING NO. 6 – Salary Determination Laws Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the three salary determinations that the DGS made on behalf of the CSM during the compliance review period. The DGS appropriately calculated and processed 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

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 Reg., 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, June 1, 2017, through August 1, 2017, the CSM reported one unit comprised of 12 active employees during the June 2017 pay period and one unit comprised of 11 active employees during the July 2017 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Number of Units Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
June 2017	1	12	12	0
July 2017	1	11	11	0

FINDING NO. 7 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary:

The DGS administers the CSM’s leave accounting services. On behalf of the CSM, the DGS 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 leave records over two pay periods, it was determined that the DGS 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 DGS failed to provide completed Leave Activity and Correction Certification forms for both units reviewed on behalf of the CSM during the June 2017 and July 2017 pay periods.

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” (Cal HR Online Manual Section 2101). Cal HR also dictates that departments identify and record all leave errors found using a Leave Activity and Correction Certification form (Ibid.). Moreover, Cal HR requires that departments certify that all leave records for the unit/pay period identified on the certification form be 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 CSM states that the DGS failed to provide completed leave activity and correction certification forms on behalf of CSM.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSM/DGS 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 599.665 and CalHR Online Manual Section 2101. Copies of any relevant documentation should be included with the plan.

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 agreement⁵. 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 Cal HR 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.

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

During the period under review, the CSM reported one employee who exceeded established limits of vacation or annual leave. The CRU reviewed the employee’s leave reduction plan to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit ⁶	Leave Reduction Plan Provided
Career Executive Assignment	M01	53.40	Yes
Total Hours		53.40	

FINDING NO. 8 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the CSM’s leave reduction efforts complied with applicable laws, regulations and CalHR policy guidelines. 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).

⁶ As of November 30, 2017.

FINDING NO. 9 – Department Does Not Maintain a Current Written Nepotism Policy

- Summary:** The CSM does not maintain a current written nepotism policy.
- Criteria:** 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. (PML, “Statewide Guidance on Nepotism Policies,” 2015-14).
- Severity:** Very Serious. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. The maintaining of a current written nepotism policy, and its dissemination to all staff, is the basis for achieving these ends.
- Cause:** The CSM states that there is no requirement to have a nepotism policy.
- Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CSM submit to the CRU a written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Worker’s 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 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 (State Fund) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments who have volunteers should have notified or updated their existing notification to the State Compensation Insurance Fund (SCIF) by April 1, 2015 whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, CSM did not employ volunteers during the compliance review period.

As such, the CRU reviewed the CSM Workers' Compensation process that was in effect during the compliance review period to verify that the CSM provided specific notices to their employees to inform them of their rights and responsibilities under CA workers' compensation law. Additionally, the CRU requested copies of the five most recent examples of claim forms in order to ensure that employees received claim forms within one working day of notice or knowledge of injury.

FINDING NO. 10 – Worker's Compensation Policy Was Not Provided to New Employees by the End of First Pay Period

Summary: The CSM does not provide specific notices to their employees to inform them of their rights and responsibilities under CA workers' compensation law.

Criteria: 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. (California Code of Regulations, Title 8, Chapter 4.5., Subchapter 1, Article 8.5., §9880.)

Severity: Very Serious. The department does not ensure that its employees are aware of policies and procedures concerning workers' compensation.

Cause: The CSM states that they have been using DGS' form GS-70 as a checklist for new employees, which does not contain a requirement for a written notice of California's worker's compensation law.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSM 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 8, Chapter 4.5., Subchapter 1, Article 8.5., §9880. Copies of any relevant documentation should be included with the plan.

FINDING NO. 11– Workers’ Compensation Notice to Employees Poster Does Not Meet Posting Requirements

Summary: While the CSM did adhere to the requirement of posting a “Notice to Employees” poster in an appropriate location, the poster did not contain the following required information: the name of the current compensation insurance carrier, claims adjustor, the contact information of the nearest information and assistance officer, the Medical Provider Network (MPN) description including specific details, MPN contact information, and the effective date of MPN coverage.

Criteria: Employers must use a poster which meets the posting requirements and has been approved by the Administrative Director. (California Code of Regulations, Title 8, Chapter 4.5, Subchapter 1, Article 8.5., §9881.)

Severity: Very Serious. The department does not ensure that its employees have essential workers’ compensation information.

Cause: The CSM states that management was unaware that the workers’ compensation poster containing the specific information listed was inadvertently removed from the wall.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CSM 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 8, Chapter 4.5, Subchapter 1, Article 8.5., §9881. Copies of any relevant documentation should be included with the plan.

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 11 permanent CSM 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.

FINDING NO. 12 – Performance Appraisals Were Not Provided to All Employees

Summary: The CSM did not provide performance appraisals to one of 11 employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period.

Classification	Date Performance Appraisal(s) Due
Staff Services Manager II (Managerial)	4/5/2017

Criteria: Departments are required to “prepare performance reports and keep them on file as prescribed by department rule” (Government Code Section 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 employees are apprised of work performance issues and/or goals in a fair and systematic manner.

Cause: The CSM states that not performing a performance evaluation on one of their 11 employees due within the twelve month period was an oversight.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSM 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 CSM's response is attached as Attachment 1.

SPB REPLY

Based upon the CSM's written response, the CSM will comply with the CRU recommendations and findings and provide the CRU with an action plan.

It is further recommended that the CSM 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.



Sent via e-mail to Alton.Ford@spb.ca.gov

October 17, 2018

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

RE: Response to Compliance Review Report

Dear Ms. Ambrose:

The Commission on State Mandates (Commission) hereby submits the following response to the State Personnel Board's (SPB's) October 17, 2018 Draft Compliance Review Report. The Commission appreciates SPB's review and the opportunity to respond to its findings. Please reference the enclosed attachment for detailed responses.

Though the Commission disputes some of the SPB findings, as is detailed in the attachment, the Commission will nonetheless submit a Corrective Action Plan within 60 days of the release of the final report to address the deficiencies identified.

Please contact Heidi Palchik at (916) 323-3562 if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", is written over a light blue horizontal line.

Heather Halsey
Executive Director

Commission on State Mandates
Draft Compliance Review Report Response

Please find the following response of the Commission on State Mandates (Commission) to the State Personnel Board (SPB) Draft Compliance Review Report, revised October 17, 2018.

FINDING No. 1 – Appointments Complied with Civil Service Laws and Board Rules.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING No. 2 – EEO Officer’s Duty Statement Does Not Reflect EEO Duties.

Cause: There is no requirement in Government Code section 19795 that the EEO duties be specified in a duty statement. Moreover, neither CalHR nor SPB has adopted regulations imposing this requirement or used any specific or mandatory language in a PML. Though it may be a good idea for the Legislature, CalHR, or SPB to adopt a requirement for the specific duties of an EEO Officer to be included in their duty statement, they have not done so.

Response: The Commission is in compliance with Government Code section 19795 by appointing the Assistant Executive Director as the EEO officer to develop, implement, coordinate, and monitor an effective EEO program. The Commission’s Sexual Harassment Prevention policy, submitted in response to the materials request, indicates that the Commission’s Assistant Executive Director is the EEO Officer and the policy specifies the duties of the EEO Officer. Each employee of the Commission has annually reviewed and signed this and all other Commission policies and is aware of who the Commission’s EEO Officer is. In addition, the Assistant Executive Director’s duty statement states that she has “full management and supervisory responsibility for the administrative functions and day-to-day operations of the Commission.” Additionally, the Commission’s EEO Officer has regularly implemented, enforced and monitored the major EEO program components including but not limited to sexual harassment prevention, disability advisory committee, and reasonable accommodation.

Accordingly, we disagree with this finding, and particularly the severity assigned to it since the EEO duties have in fact been regularly performed with the exceptions otherwise noted in this compliance audit, and request that it be removed from the Compliance Review Report. However, we agree to update the EEO Officer’s duty statement to include the EEO duties as now mandated by SPB through this audit.

FINDING No. 3 – Personal Services Contract Did Not Comply With Procedural Requirements.

Cause: The Commission has only one personal services contract. This contract was executed by using the STD 210 Short Form Contract because the contract price of \$4,995 was within the STD 210 limit of \$9,999.99. Unlike page 3 of the STD 215 Standard Agreement, the STD 210 Short Form Contract does not contain a checkbox or other area to indicate that a justification has been included pursuant to the language in Government Code section 19130(b)(3): “The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.” Therefore, staff reasonably assumed, given the very low dollar amount of the contract involved,

that it was exempt from this requirement just as contracts under \$5,000 are exempt from many other contracting requirements under law and thus suitable for the STD 210.

Finally, to execute the STD 210, the contract is signed by the Commission's Executive Director, the Contractor, and, because the Commission is a client agency of DGS/CFS, it is also signed by DGS/CFS staff as the Commission's accounting officer. Without any indication from its DGS specialists over the years that the documentation for the STD 210 was lacking or that the requirements had changed, Commission staff contends it complied with the procedural requirements of a STD 210.

Response: Learning more about this requirement as a result of this audit, it now appears that the STD 210 must be updated by DGS to ensure compliance with this requirement for very small contracts under \$9,999.99. Moreover, Commission staff is now cognizant of the requirement to include the Government Code section 19130(b)(3) justification even for such small contracts and regardless of what is specified by the DGS form.

Commission staff will include a Government Code section 19130(b)(3) justification for all future personal services contracts, however small, as is required.

FINDING NO. 4 – Union Was Not Notified of the Personal Services Contract.

Cause: The Commission, as a client agency, relies on DGS/CFS and DGS/HR as subject matter experts to keep the Commission apprised of changes in the law affecting procurement and labor relations. Commission staff was not aware that the one Short Form Contract for \$4,995 at issue in Finding 3 required union notification.

Response: The Commission's Purchasing Procedures Manual provides that Commission staff will consult with DGS/HR and DGS Office of Legal Services for additional guidance on its personal services contract. Accordingly, the Commission will do so and will notify unions of any future personal services contract.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 6 – Salary Determination Laws Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 7 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed.

Cause: DGS administers the Commission's leave accounting services and apparently failed to provide completed Leave Activity and Correction Certification forms for both units reviewed on behalf of the Commission during the June 2017 and July 2017 pay periods, according to SPB's audit. The DGS specialist assigned to the Commission (which has seen turn-over 12 times in the past eight years) usually emails the SCO Leave Activity Balance (LAB) report 45 days after the monthly timesheets are submitted. Upon receipt and review of the LAB, if errors in leave accounting are discovered, Commission staff notifies its specialist who corrects them. However,

Commission staff would have no way of even being aware of whether DGS completed the Leave Activity and Correction Certification forms, unless it were to do field audits of DGS's work itself. It is unclear if the Commission has the authority to go into DGS's offices and audit its staff work and it certainly does not have the staffing or resources to do so.

Response: The Commission urges SPB to address this finding with DGS. It is hoped that the flagging of this issue in the Compliance Review will itself lead DGS to regularly provide completed Leave Activity and Correction Certification forms. And, in this respect, Commission staff would note that page 15 of the Compliance Report states "for post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines."

FINDING NO. 8 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines.

Cause: None

Response: No adverse findings were reported during the Compliance Review.

FINDING NO. 9 – Department Does Not Maintain a Current Written Nepotism Policy.

Cause: There is no requirement to have a nepotism policy. PML 2015-14 states that departments "should" adopt a policy, but does not contain mandatory language. The verbs "shall," "must" and "will" indicate mandatory requirements; "should" is used to denote recommended practices; and "may" is permissive. Moreover, the PML itself disclaims a statewide policy and instead states the "Department of Human Resources (CalHR) does not maintain a uniform statewide policy governing nepotism but instead is providing the following *guidance*." (Emphasis added.) There is no dispute that nepotism is bad and that having a policy against it could be a good idea, however the Legislature, CalHR, or SPB have not mandated the adoption of anti-nepotism policies by using mandatory language in a statute, regulation or PML.

Response: The Commission can verify that it has no employees with relationships with other employees by blood, adoption, marriage and/or cohabitation; nor have there been any candidates with such relationships with any then current Commission employees. The Commission uses a merit-based system for all hiring, promotion, and assignments and has received no reports or complaints of nepotism. Accordingly, the Commission disputes this finding, in particular the severity of the violation, and respectfully requests that this finding be removed the Compliance Review Report.

Nonetheless, the Commission agrees to adopt, maintain, and annually disseminate a written anti-nepotism policy for the review and signature of Commission staff, as is now being mandated by this SPB Compliance Review Report.

FINDING NO. 10 – Worker's Compensation Policy Was Not Provided to New Employees by the End of First Pay Period.

Cause: The Commission uses DGS' Form GS-70 (Employee Appointment Documentation Checklist) as a checklist for new employees which does not contain a requirement for a written notice of California's worker's compensation law. However, each new employee, as part of the new hire documentation, is required to fill out the GS-20 (Emergency Information/Physician Designation Form) which allows each employee the option to designate a physician in case of injury on the job or sudden job-related illness.

The Commission, as a client agency of DGS/HR, relies on DGS' human resource expertise and submits all appointment documentation to the assigned DGS specialist for processing, under the interagency agreement. DGS/HR has never informed the Commission of the requirements for a written notice, nor that any of the new hire documentation was missing or incomplete. Since the Draft Compliance Review Report was issued, staff has become aware that this requirement is relatively new and the DGS' Form GS-70 has not been updated to include it.

Response: For future hires, the Commission will provide written notice to new employees in accordance with section 9880 of the regulations. Commission staff understands that DGS will also be updating the DGS' Form GS-70 accordingly.

FINDING NO. 11– Workers' Compensation Notice to Employees Poster Does Not Meet Posting Requirements.

Cause: Each year, the Commission updates and posts its labor law posters and supplements these general posters with additional required postings in the office break room. Commission management was unaware that the workers compensation poster containing the specific information listed in this finding was inadvertently removed from the wall.

Response: The Commission has reposted the workers compensation poster and has always purchased and posted this poster annually.

FINDING NO. 12– Performance Appraisals Were Not Provided to All Employees.

Cause: The Commission did not perform a performance evaluation on one of its 11 employees within the twelve month period after the employee's probationary period.

Response: The Commission acknowledges this oversight and has subsequently scheduled the completion of the performance evaluation for that one employee.