



# **COMPLIANCE REVIEW REPORT**

## **LABOR AND WORKFORCE DEVELOPMENT AGENCY**

Compliance Review Unit  
State Personnel Board  
January 06, 2016

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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 DTSCs through the Board's decisions, rules, policies, and consultation.

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

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

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of Labor and Workforce Development Agency (LWDA) personnel practices in the areas of examinations, appointments, EEO, PSC's, and mandated training from December 1, 2014, through May 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Appointments Complied with Civil Service Laws and Board Rules	In Compliance
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Mandated Training	Mandated Training Complied with Statutory Requirements	In Compliance

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

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

### **BACKGROUND**

The LWDA was established to address issues relating to California workers and their employers. The LWDA is responsible for labor law enforcement, workforce development, and benefit payment and adjudication. The LWDA works to combat the underground economy and help legitimate businesses and workers in California through a combination of enforcement and education activities.

The LWDA oversees seven major departments, boards, and panels that serve California businesses and workers. These include:

- Employment Development Department (EDD)
- Employment Training Panel (ETP)
- California Unemployment Insurance Appeals Board (CUIAB)
- Department of Industrial Relations (DIR)
- Agricultural Labor Relations Board (ALRB)
- Public Employment Relations Board (PERB)
- California Workforce Development Board (CWDB)

The work of the LWDA, which has approximately 12,000 employees, covers seven main areas:

- Administering the collective bargaining statutes covering many of California's public-sector employees.
- Benefit administration, including workers' compensation, unemployment, disability, and family leave insurance.
- Enforcement of California labor laws to protect workers and create an even playing field for employers.
- Appellate functions related to employee benefits, regulations, and enforcement in the workplace.

- Workforce development activities, including grant making for job training and coordination with other workforce development partners.
- Tax collection through the EDD.
- Economic development activities that lead to job creation and improved economic competitiveness.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing LWDA examinations, appointments, EEO program, PSC's and mandated training from December 1, 2014, through May 31, 2015. The primary objective of the review was to determine if LWDA's personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

During the period under review, the EDD under an interagency agreement did not conduct any examinations and made one retired annuitant appointment on behalf of the LWDA. The appointee's application was reviewed and they were deemed eligible to be hired as temporary employee, not to exceed 960 hours in a fiscal year.

The review of the LWDA'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 LWDA had no PSC's that were subject to Department of General Services (DGS) approval.<sup>1</sup>

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

On December 17, 2015, an exit conference was held with the LWDA to explain and discuss the CRU's initial findings and recommendations. The LWDA was given until

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<sup>1</sup> 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.

January 5, 2016, to submit a written response to the CRU's draft report. On January 5, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance 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.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the EDD on behalf of the LWDA made one appointment. The CRU reviewed this appointment, which is listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Manager II (Supervisor)	Retired Annuitant	Temporary	Intermittent	1

### **FINDING NO. 1 – Appointments Complied With Civil Service Laws and Board Rules**

The EDD on behalf of the LWDA made one retired annuitant appointment. The individual submitted their application and was eligible to be hired as a retired annuitant, not to exceed 960 hours in a fiscal year.

The CRU found no deficiencies in the appointment that the LWDA conducted during the compliance review period. Accordingly, the CRU found that the appointment the EDD on behalf of LWDA made during the compliance review period satisfied civil service laws and board rules.

## Equal Employment Opportunity (EEO)

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources (CalHR) 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.) In a state agency with less than 500 employees, like the LWDA, the EEO officer may be the personnel officer. (*Ibid.*)

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

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

The LWDA contracts with EDD for assistance with human resources processing and utilizes EDD's EEO plan and policy. The CRU reviewed LWDA's EEO policies, procedures, and programs in effect during the compliance review period.

### **FINDING NO. 2 – Equal Employment Opportunity Program Complied with 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 LWDA's EEO program provided employees with information and guidance on the EEO process including instructions on how to file

discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Secretary of the LWDA. In addition, the LWDA has an established DAC that reports to the director on issues affecting persons with a disability. The LWDA also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

### Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1)

Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Additionally, each department having 50 or more employees must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

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

### **FINDING NO. 3 – Mandated Training Complied with Statutory Requirements**

The LWDA provided semiannual ethics training to its 13 filers during the 2-year calendar year period commencing in 2013. The LWDA also provided semiannual sexual harassment prevention training to its 4 existing supervisors and 9 rank and file employees every 2 years.

### **DEPARTMENTAL RESPONSE**

No departmental response was required since all areas reviewed were in compliance.



## **SPB REPLY**

The LWDA was found to be in compliance in all areas reviewed during the compliance review period. Therefore, no further action is required.