

COMPLIANCE REVIEW REPORT

CALIFORNIA STATE LOTTERY COMMISSION

Compliance Review Unit
State Personnel Board
March 26, 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, 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 Lottery Commission (CSLC)'s personnel practices in the areas of appointments, EEO, PSC's, mandated training, compensation and pay, leave, policy and processes¹. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Sufficient Justification Was Not Provided for All Personal Services Contracts
Personal Services Contracts	Unions Were Not Notified in a Timely Manner
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Incorrect Application of Salary Determination Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Application of Alternate Range Movement
Compensation and Pay	Hiring Above Minimum Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Arduous Pay
Compensation and Pay	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Incorrect Authorization of Pay Differential

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

Area	Finding
Compensation and Pay	Incorrect Authorization of Out-of-Class Pay
Compensation and Pay	Administrative Time Off Authorization 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 Policy Was Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Neptotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations, and CalHR Policies and Guidelines

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 CSLC was created by the Lottery Act, an initiative and constitutional amendment approved by the voters on November 6, 1984. The CSLC began operations in October 1985 with a clear mission: To provide supplemental funding for public schools and colleges. The California Lottery Education Fund provides supplemental dollars to K-12 public schools, Community Colleges, the California State University, the University of California, and other educational entities.

The CSLC oversees the California Lottery and approves its budget and business plans. Headquartered in Sacramento with nine district offices located around the state, the CSLC is supported by 746 employees including Lottery Managers, Senior Marketing

Specialists, District Sales Representatives, Key Accounts Specialists, and Information Technology staff.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CSLC's appointments, EEO program, PSC's, mandated training, compensation and pay, leave, policy and processes². The primary objective of the review was to determine if the CSLC's 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.

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

A cross-section of the CSLC'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 CSLC provided, which included notice of personnel action (NOPA) forms, requests for personnel actions (RPAs), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CSLC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CSLC did not make any additional appointments during the compliance review period.

The CSLC's appointments were also selected for review to ensure the CSLC applied salary regulations accurately and correctly processed employees' compensation. The CRU examined the documentation that the CSLC provided, which included, employees' employment and pay history, and any other relevant documentation such as certifications, degrees, and/or appointees' applications. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay, hiring above minimum (HAM) requests, out-of-class assignments (OOC), monthly pay differentials, bilingual and arduous pay. During the compliance review, the CSLC did not issue or authorize red circle rates.

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

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

The CSLC'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 CSLC'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 CSLC to provide a copy of their leave reduction policy.

The CRU reviewed the CSLC's Leave Activity and Correction certification forms to verify that the CSLC 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 CSLC'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 CSLC's employee's timesheets, 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. Additionally, the CRU reviewed a selection of CSLC's employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. The CSLC did not track any temporary intermittent employees by actual time worked during the compliance review period.

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.

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

On November 30, 2018, an exit conference was held with the CSLC to explain and discuss the CRU’s initial findings and recommendations. The CRU received and carefully reviewed the CSLC’s written response, 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, July 1, 2016 to March 31, 2017, the CSLC made 137 appointments. The CRU reviewed 38 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Data Processing Manager III	Certification List	Permanent	Full Time	1
District Sales Representative, California State Lottery	Certification List	Permanent	Intermittent	1
Investigator	Certification List	Permanent	Full Time	1
Key Accounts Specialist, California State Lottery	Certification List	Permanent	Full Time	1
Lottery Manager (Sales)	Certification List	Permanent	Full Time	1
Lottery Ticket Sales Specialist	Certification List	Permanent	Full Time	1
Materials and Stores Specialist	Certification List	Permanent	Full Time	1
Materials and Stores Supervisor	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Personnel Specialist	Certification List	Permanent	Full Time	1
Program Technician	Certification List	Permanent	Full Time	1
Program Technician (LEAP)	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	1
Route Sales Representative	Certification List	Permanent	Full Time	1
Senior Information Systems Analyst (Supervisor)	Certification List	Permanent	Full Time	1
Systems Software Specialist III (Technical)	Certification List	Permanent	Full Time	1
Warehouse Worker	Certification List	Permanent	Intermittent	1
Assistant Information Systems Analyst	Mandatory Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	3
Attorney III	Mandatory Reinstatement	Permanent	Full Time	1
District Sales Representative, California State Lottery	Mandatory Reinstatement	Permanent	Full Time	2
Lottery Ticket Sales Specialist	Mandatory Reinstatement	Permanent	Full Time	2
Personnel Specialist	Mandatory Reinstatement	Permanent	Full Time	1
Program Technician II	Mandatory Reinstatement	Permanent	Full Time	1
Senior Accounting Officer	Mandatory Reinstatement	Permanent	Full Time	1
District Sales Representative, California State Lottery	Transfer	Permanent	Intermittent	1
Investigator	Transfer	Permanent	Full Time	1
Management Services Technician	Transfer	Permanent	Full Time	3
Program Technician II	Transfer	Permanent	Full Time	1
Program Technician III	Transfer	Permanent	Full Time	1
Research Analyst II (Economics)	Transfer	Permanent	Full Time	1
Warehouse Worker	Transfer	Permanent	Full Time	1

The CSLC 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 17 certification list appointments reviewed, the CSLC 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 CSLC made 12 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 CSLC complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed nine CSLC 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 CSLC verified the eligibility of each candidate to their appointed class.

However, the CSLC did not retain appropriate appointment documentation described in finding one.

FINDING NO. 1 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The CSLC failed to retain personnel records such as NOPAs, duty statements, job announcements/bulletins, and applications. Specifically, of the 38 appointments reviewed, the CSLC did not retain two NOPAs.

Criteria: As specified in section 26 of the Board's regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the

record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.) Section 174 of the Board's regulations specifically applies to examination applications and requires a two year retention period.

Severity: Non-serious or Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The CSLC states it does not believe this finding is indicative of a systemic retention problem. Rather, it is likely the result of human error made in the course of normal business.

Action: The CSLC has submitted a corrective action plan for ensuring compliance in meeting the documents retention requirements as specified in the Cal. Code Regs., tit. 2, § 26 and Section 174 of the Board's regulations; therefore, no further action is required at this time.

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).)

In reviewing the CSLC EEO program that was in effect during the compliance review period, the CRU determined the following:

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

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's, role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CSLC'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 Director of the CSLC. In addition, the CSLC has an established DAC which reports to the Director on issues affecting persons with disabilities. The CSLC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the CSLC's 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 those contracts executed 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 (Gov. Code, § 19130 (b)).

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, July 1, 2016 to September 30, 2017, the CSLC had 45 PSC's that were in effect. The CRU reviewed 11 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount
Capital Datacorp	VMware Maintenance and Support Renewal	09/07/17-09/06/20	\$150,598.20
Casanova Pendrill	Marketing and Advertising Agency	01/01/12-12/31/18	\$91,500,000.00
Chula Vista Lawn	Landscape Services	02/01/17-07/31/18	\$17,000.00
Hewlett Packard Enterprise Company	Aruba Clearpass Consulting Services	07/01/17-06/30/18	\$18,900.00
Merchants Building Maintenance	Janitorial Services	02/01/17-07/31/18	\$26,000.00
Mission Linen and Uniform Service	Rental and Laundering Service	06/26/17-06/25/20	\$49,000.00
OPTIV Security Inc.	Blue Coat License, Software Support and Maintenance	07/01/17-09/30/18	\$59,761.30
Ross Clark Material Handling	Pallet Racking Repairs	06/16/17-07/31/17	\$6,000.00
Sacramento Technology Group	Aruba Wireless Equipment Renewal	05/01/17-04/30/18	\$15,203.81
Solutions Simplified	Nimble Storage Software Renewal	06/23/17-12/12/19	\$12,275.00
Universal Window Cleaning	Window Cleaning	10/06/17-10/05/20	\$80,000.00

In reviewing the CSLC’s PSC’s during the compliance review period, the CRU determined the following:

FINDING NO. 3 – Sufficient Justification Was Not Provided for All Personal Services Contracts

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

Vendor	Services	Contract Amount
Capital Datacorp	VMware Maintenance and Support Renewal	\$150,598.20
Hewlett Packard Enterprise Company	Aruba Clearpass Consulting Services	\$18,900.00
Mission Linen and Uniform Service	Rental and Laundering Service	\$49,000.00

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 Regs., 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 CSLC states that any deficiency was due to a lack of clarity on their part regarding the level of detail and specificity required by the SPB to satisfy this requirement.

Action: The CSLC has implemented corrective measures to ensure compliance with Government Code section 19130, subdivision (b). In addition, the CSLC has submitted a corrective action plan to provide additional training on personal services contracting for its contract managers and deputy directors; therefore, no further action is required at this time.

FINDING NO. 4 – Unions Were Not Notified in a Timely Manner

Summary: The CSLC did not notify unions that represent state employees who perform the type of work to be contracted prior to contract execution for six of the 11 PSC’s that were reviewed.

Vendor	Services	Date Executed	Date Union Notified
Capital Datacorp	VMware Maintenance and Support Renewal	09/07/17	02/21/18
Hewlett Packard Enterprise Company	Aruba Clearpass Consulting Services	07/01/17	08/07/17
OPTIV Security Inc.	Blue Coat License, Software Support and Maintenance	07/01/17	07/21/17
Sacramento Technology Group	Aruba Wireless Equipment Renewal	05/01/17	06/28/17
Solutions Simplified	Nimble Storage Software Renewal	06/23/17	06/28/17
Universal Window Cleaning	Window Cleaning	10/06/17	10/17/17

Criteria: The state agency must notify all organizations that represent state employees who perform the type of work to be contracted before the PSC is executed. (Gov. Code, § 19132, subd. (b)(1).)

Severity: Serious. Without notifying all organizations that represent state employees, jobs may be potentially outsourced to private entities that could have been performed by state employees, resulting in a potential loss of state funds.

Cause: The CSLC states that the delay in providing notice for one contract was due to oversight, and five contracts were delayed due in part to its procurement software. Further, the CSLC's staff was not sufficiently trained on the statutory notice requirement.

Action: The CSLC has implemented a new procedure to ensure advance union notification for purchase orders, and is currently sending justification memos to the appropriate unions to ensure compliance with Gov. Code, § 19132, subd. (b)(1). In addition, the CSLC is upgrading its procurement software; and is preparing additional training on personal services contracting for procurement staff. Therefore, no further action is required at this time.

Mandated Training

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

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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

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

The CRU reviewed the CSLC's mandated training program that was in effect during the compliance review period. The CSLC's supervisory training and ethics training were found to be in compliance; however, the CSLC's sexual harassment prevention training was not in compliance.

FINDING NO. 5 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CSLC did not provide sexual harassment prevention training to seven of 24 new supervisors within six months of their appointment. In addition, the CSLC did not provide sexual harassment prevention training to nine of 15 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 CSLC states that due to its EEO Office turnover during the review period, they relied upon the online training offered periodically by the Department of Fair Employment and Housing; however, not everyone was able to take advantage of the training when offered. The CSLC agrees that the sexual harassment prevention training of some of its supervisors and managers was not timely.

Action: The CSLC hired an EEO Officer in March of 2017 who has begun conducting mandated EEO training. The CSLC submitted a corrective action plan to increase the staffing of its EEO Office to ensure compliance with Gov. Code, § 12950.1, subd. (a). The CSLC must ensure that sexual harassment prevention training is provided 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 CSLC submit a report of compliance with sexual harassment prevention training mandates. Copies of any relevant documentation should be included in the submission.

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^[1] upon appointment depending on the appointment type, and the employee's state employment pay history and tenure.

During the period under review, July 1, 2016 to March 31, 2017, the CSLC made 137 appointments. The CRU reviewed 21 of those appointments to determine if the CSLC applied salary regulations accurately and correctly processed employees' compensation transactions. These appointments are listed below:

[1] "Rate" is any one of the dollar amounts found within the salary ranges and steps of the Pay Plan established by the CalHR (2 CA CCR Section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary
District Sales Representative, California State Lottery	Certification List	Permanent	Intermittent	\$3,795
Investigator	Certification List	Permanent	Full Time	\$5,510
Materials and Stores Specialist	Certification List	Permanent	Full Time	\$3,552
Materials and Stores Supervisor	Certification List	Permanent	Full Time	\$3,552
Personnel Specialist	Certification List	Permanent	Full Time	\$3,874
Program Technician	Certification List	Permanent	Full Time	\$2,384
Program Technician	Certification List	Permanent	Full Time	\$2,826
Route Sales Representative	Certification List	Permanent	Full Time	\$2,684
Warehouse Worker	Certification List	Permanent	Intermittent	\$17.09/hour
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent	Full Time	\$5,758
Attorney III	Mandatory Reinstatement	Permanent	Full Time	\$10,820
Lottery Ticket Sales Specialist	Mandatory Reinstatement	Permanent	Full Time	\$2,896
Personnel Specialist	Mandatory Reinstatement	Permanent	Full Time	\$4,033
Senior Accounting Officer	Mandatory Reinstatement	Permanent	Full Time	\$4,977
Investigator	Mandatory Reinstatement	Permanent	Full Time	\$7,103
District Sales Representative, California State Lottery	Transfer	Permanent	Intermittent	\$3,693
Management Services Technician	Transfer	Permanent	Full Time	\$2,967
Management Services Technician	Transfer	Permanent	Full Time	\$3,690
Program Technician III	Transfer	Permanent	Full Time	\$3,864
Research Analyst II (Economics)	Transfer	Permanent	Full Time	\$5,072
Warehouse Worker	Transfer	Permanent	Full Time	\$3,268

FINDING NO. 6 – Incorrect Application of Salary Determination Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found the following error in the CSLC’s salary determination of employee compensation:

Classification	Description of Finding	Criteria
Program Technician	Incorrect salary determination for an A01 appointment. Employee should have retained current salary and MSA from previous appointment. This resulted in the employee being incorrectly compensated.	CCR 599.674c

Severity: Very Serious. The CSLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CSLC states that during the review period a lack of appropriate salary determination training and additional review procedures led to the salary determination error.

Action: The CSLC implemented corrective measures by creating a position responsible for review of personnel transactions and processing of salary determinations, and has submitted a corrective action plan to have staff attend salary determination training to ensure compliance with Cal. Code Regs., tit. 2, § 599.666 and § 599.674c. Therefore, no further action is required at this time.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges (Cal. Code Regs., tit. 2, § 599.681). However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. They are described in the alternate range criteria (CalHR Pay

Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to rule 599.681.

During the period under review, July 1, 2016 to March 31, 2017, the CSLC made six alternate range movements within a classification (335 transactions). The CRU reviewed all of those alternate range movements to determine if the CSLC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary
Research Analyst I (General)	Range A	Range B	Full Time	\$3,409
Research Analyst I (General)	Range B	Range C	Full Time	\$3,518
Staff Services Analyst (General)	Range L	Range M	Full Time	\$3,251
Systems Software Specialist III (Technical)	N/A	Range A	Full Time	\$8,024
Systems Software Specialist III (Technical)	N/A	Range A	Full Time	\$6,632
Systems Software Specialist III (Technical)	N/A	Range A	Full Time	\$7,096

FINDING NO. 7 – Incorrect Application of Alternate Range Movement

Summary: The CRU found the following errors in the CSLC's compensation determinations:

Classification	Description of Finding	Criteria
Research Analyst I (General)	Incorrect 335 transaction calculation resulting in an erroneous MSA date. Employee was overcompensated.	CCR 599.674b
Research Analyst I (General)	Incorrect 335 transaction calculation resulting in an erroneous MSA date. Employee was overcompensated.	CCR 599.676
Staff Services Analyst (General)	Incorrect 335 transaction calculation resulting in an erroneous MSA date. Employee was overcompensated.	CCR 599.674b

Severity: Very Serious. The CSLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CSLC states that errors were the result of the Personnel Transactions staff not properly keying the new anniversary date at the time of range change movement and/or Classification and Pay analysts incorrectly applying alternate range placement regulations upon appointment. The CSLC concedes that during the review period a lack of appropriate training and additional review led to the identified salary determination errors.

Action: In 2018, the CSLC created a new Personnel Compliance Analyst position to review personnel transactions and processing for compliance prior to managerial review; and staff have been trained in alternate range movements.

It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSLC submit to the SPB a written corrective action plan that addresses the additional corrections the department will implement to ensure conformity with California Code of Regulations, title 2, sections 599.674(b), and 599.676. The CSLC must work with CalHR and the State Controller's Office (SCO) to correct the salary and range issues in order ensure the employees are compensated correctly.

Hiring Above Minimum Requests

Government Code section 19836 authorizes CalHR to allow payments above-the minimum rate in the salary range (HAM) in order to hire persons who have extraordinary qualifications. On April 1, 2005, CalHR granted delegated authority to all departments to approve HAM's for extraordinary qualifications, former legislative employees, and former exempt employees (PML, "Delegation of Personnel Management Functions," 2005-012). On September 25, 2007, CalHR also granted delegated authority for all departments to approve exceptions to the HAM criteria for extraordinary qualifications for all new state employees without prior review or approval from CalHR. However, for existing state

employees, departments should obtain approval from CalHR and delegated authority does not apply (PML, “Hiring Above Minimum Standards for Extraordinary Qualifications,” 2010-005).

Prior to approving a HAM under delegated authority, departments should demonstrate and document the candidate’s extraordinary qualifications. The candidate’s extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. The extraordinary qualifications should provide expertise in a particular area of the department’s program well beyond the normal requirements of the class. The department may also consider the unique talent, ability or skill demonstrated by the candidate’s previous job experience as extraordinary qualifications, but the scope and depth of such experience should be more significant than the length. The qualifications and hiring rates of State employees already in the same class should be carefully considered (PML, “Hiring Above Minimum Standards for Extraordinary Qualifications,” 2010-005 or Cal HR Online Manual Section 1707). In all cases, the candidate’s current salary or other bona fide salary offers should be above the minimum rate, verified and appropriately documented. Additionally, departments must request and approve HAM’s before a candidate accepts employment (*Ibid.*).

During the period under review, July 1, 2016 to March 31, 2017, the CSLC authorized two HAM requests. The CRU reviewed both authorized HAM requests to determine if the CSLC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications and subsequent salaries, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary
Investigator	Certification List	New to State Service	\$5,035 - \$6,508	\$6,508
Systems Software Specialist II (Technical)	Certification List	New to State Service	\$5,814 - \$7,642	\$7,260

FINDING NO. 8 - HAM Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Arduous Pay

Effective July 1, 1994, appointing authorities were provided the discretion to provide additional compensation for employees exempt from the Fair Labor Standards Act (FLSA) who perform arduous work that exceeds the normal demands of state service employment. (CalHR's Human Resource Manual Section 1702). The work must be extraordinarily demanding, time consuming, and significantly exceed employees' normal workweek. The employee cannot be entitled to receive any other type of compensation such as overtime. Eligible employees are FLSA-exempt employees who do not receive compensation in recognition of hours worked in excess of 40 hours per week. The duration of the arduous period must be at least two weeks or more (*Ibid.*).

Excluded and represented employees who are FLSA-exempt and assigned to Work Week Group E are eligible to receive up to four (4) months of pay per fiscal year, or per event for emergencies, if all of the following conditions are met⁴:

- There is a nonnegotiable deadline or extreme urgency;
- Work exceeds normal work hours and normal productivity;
- Work is unavoidable;
- Work involves extremely heavy workload;
- Employee is eligible for no other compensation, and
- The circumstances that support this pay differential are documented.

Departments have delegated authority to approve arduous pay for excluded employees who are FLSA-exempt, but CalHR approval is required for any arduous pay issued to represented employees.

Although departments have delegated authority to approve Pay Differential 62, there is a requirement to complete CalHR Form 777, documenting the circumstances, assessment and rationale behind all Pay Differential 62 approvals. A new Form 777 is required for each employee receiving the pay differential, each time an employee is approved to receive a new pay differential, and each time an extension is requested. Extensions are granted only under rare circumstances. Departments must keep the Form 777 on file and retain the form for five years after the approval date (*Ibid.*).

⁴ Applicable Bargaining Contracts further define specific criteria for represented employees.

During the period under review, April 1, 2016 to December 31, 2016, the CSLC issued Arduous Pay to one employee. The CRU reviewed the arduous pay authorization, listed below, to ensure compliance with applicable CalHR policies and guidelines:

Classification	Collective Bargaining Identifier	Work Week Group	Time Base	Arduous Pay Compensation	Number of Months Received
Staff Services Manager III	M01	E	Full Time	\$1,200/month	8 months

FINDING NO. 9 – Incorrect Authorization of Arduous Pay

Classification	Area	Description of Finding(s)	Criteria
Staff Services Manager III	Arduous Pay	Justification for the pay differential did not meet all conditions for Arduous Pay. The criteria for granting Arduous Pay not met is “the employee is eligible for no other compensation.”	Pay Differential 62

Severity: Very Serious. The CSLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CSLC does not agree with this finding. The CSLC states it believes the arduous pay was appropriately authorized in accordance with the pay differential, based upon information available to the CSLC at the time. In 2016, the CSLC consulted with staff from CalHR regarding the circumstances giving rise to the arduous pay. There is no documentation of the 2016 discussion with CalHR authorizing the arduous pay. At present, CalHR management concurs with this finding that the employee should have received out-of-class compensation instead.

Action: The CSLC has submitted a corrective action plan for ensuring compliance with arduous pay requirements as specified in Pay Differential 62 and the CalHR Human Resource Manual Section 1702. The CSLC will request written approval from CalHR prior to utilizing the arduous pay differential in the future; therefore, no further action is required at this time.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. In accordance with the Pay Scales, Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, rather than the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, April 1, 2016 to December 31, 2016, the CSLC issued Bilingual Pay to 42 employees. The CRU reviewed 21 of these bilingual pay authorizations, to ensure compliance with applicable CalHR policies and guidelines, listed below:

Classification	Collective Bargaining Identifier	Time Base
Associate Governmental Program Analyst	R01	Full Time
C.E.A.	M01	Full Time
District Sales Representative, California State Lottery	R01	Full Time
District Sales Representative, California State Lottery	R01	Full Time
District Sales Supervisor, California State Lottery	S01	Full Time

Executive Assistant	R04	Full Time
Information Officer I (Specialist)	R01	Full Time
Key Accounts Specialist, California State Lottery	R01	Full Time
Lottery Manager (Sales)	S01	Full Time
Marketing Analyst I, California State Lottery	R01	Full Time
Office Services Supervisor I (General)	U04	Full Time
Office Technician (Typing)	R01	Full Time
Program Technician	R04	Full Time
Program Technician II	R04	Full Time
Route Sales Representative	R01	Full Time
Staff Information Systems Analyst (Specialist)	R01	Full Time
Staff Services Analyst	R01	Full Time
Staff Services Manager I	S01	Full Time
Supervising Lottery Agent	S07	Full Time
Television Specialist	R01	Full Time
Warehouse Worker	R01	Full Time

FINDING NO. 10 – Incorrect Authorization of Bilingual Pay

Classification	Area	Description of Finding(s)	Criteria
Executive Assistant	Bilingual Pay	No record of completed Oral Fluency Exam	Gov. Code, § 7296
Lottery Manager (Sales)	Bilingual Pay	No record of completed Oral Fluency Exam and missing documentation stating 10% of duties performed are bilingual related	Pay Differential 14 Gov. Code, § 7296
Office Services Supervisor I (General)	Bilingual Pay	Missing documentation stating 10% of duties performed are bilingual related	Pay Differential 14
Staff Information Systems Analyst (Specialist)	Bilingual Pay	No record of completed Oral Fluency Exam	Gov. Code, § 7296
Staff Services Analyst	Bilingual Pay	Missing documentation stating 10% of duties performed are bilingual related	Pay Differential 14

Staff Services Manager I	Bilingual Pay	Missing documentation stating 10% of duties performed are bilingual related	Pay Differential 14
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Severity: Very Serious. The CSLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CSLC states that is in the process of updating its internal bilingual certification and pay procedure; and the errors are the result of a lack of an internal operating procedure.

Action: The CSLC has submitted a corrective action plan for ensuring compliance with Gov. Code, § 7296; therefore, no further action is required at this time.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class has unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on criteria such as: recruitment and retention difficulties; work location or shift assignment; special professional or educational certification; special but temporary responsibilities; possession of special licenses, skills or training; performance of atypical duties; or incentive-based pay (CalHR Classification and Pay Manual Section 230).

Pay Scales, Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the Pay Scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, April 1, 2016 to December 31, 2016, the CSLC issued pay differentials to 122 employees. (For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.) The CRU reviewed 11 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Chief Lottery Agent	109	\$65
Digital Print Operator I	202	\$150
District Sales Supervisor, California State Lottery	13	5%
Investigator	109	\$65
Investigator	244	\$125
Investigator	245	\$568
Investigator	245	\$284
Maintenance Mechanic	233	\$100
Program Technician II	124	\$100
Stationary Engineer	233	\$100
Supervising Program Technician II	124	\$100

FINDING NO. 11 – Incorrect Authorization of Pay Differentials

Classification	Area	Description of Finding(s)	Criteria
District Sales Supervisor, California State Lottery	Recruitment and Retention Pay	The employee’s classification is not eligible to receive the five percent recruitment and retention pay.	Pay Differential 13

Severity: Very Serious. The CSLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CSLC states that a lack of additional review procedure led to the identified pay differential being erroneously paid to the employee.

Action: The CSLC has submitted a corrective action plan for ensuring compliance with Pay Differential 13; corrected the error, removed the pay differential and notified the employee; therefore, no further action is required at this time.

Out-of-Class Assignments (OOC) and Pay

For excluded⁵ and most rank and file employees, out of class work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment (CA Code of Regulations § 599.810).

According to CalHR’s Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and CalHR Rule 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provision or CalHR regulation. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires (Section 375).

During the period under review, April 1, 2016 to December 31, 2016, the CSLC issued out-of-class pay to four employees. The CRU reviewed all of the out-of-class assignments to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
Staff Services Manager III	M01	C.E.A	11/01/16-06/20/17
Warehouse Worker	R12	Materials and Stores Supervisor	6/27/16-8/27/16
Warehouse Worker	R12	Materials and Stores Supervisor	4/25/16-6/25/16
Warehouse Worker	R12	Materials & Stores Supervisor	3/28/16-4/19/16

⁵ “Excluded employee” means an employee as defined in section 3572(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

FINDING NO. 12 – Incorrect Authorization of Out-of-Class Pay

Classification	Area	Description of Finding(s)	Criteria
Warehouse Worker	Out of Class Pay	Employee was not compensated for 11 days of out-of-class pay while performing the duties at the higher-level classification.	Pay Differential 236

Severity: Very Serious. The CSLC failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CSLC states that Personnel Transactions staff made an error in keying the OOC pay, resulting in underpayment of 11 days of OOC pay. The CSLC concedes a lack of additional review procedure led to the identified underpayment; however, the identified error is the result of a keying error made in the course of normal business.

Action: The CSLC has submitted a corrective action plan for ensuring the impacted employee is compensated appropriately for OOC duties, and regular reviews of OOC pay will be conducted to ensure compliance with Pay Differential 236. Therefore, no further action is required at this time.

Leave

Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval

will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time (PML, "Administrative Time Off (ATO) – Policy, Procedure and Documentation Requirements", 2012-008).

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor (§ 599.785.5 Administrative Time Off - During State of Emergency).

During the period under review, January 1, 2016 to December 31, 2016, the CSLC placed four employees on ATO. The CRU reviewed these ATO appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days/Hours on ATO	Extension(s) Approved by CalHR
Chief Lottery Agent	8/24/15-6/1/16	283 days	Yes
District Sales Representative, California State Lottery	3/29/16-6/14/16	78 days	Yes
Investigator	11/14/16-11/26/16	13 days	N/A
Investigator	11/14/16-4/28/17	166 days	Yes

FINDING NO. 13 – Administrative Time Off Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the placement of four employees on ATO during the compliance review period. The CSLC provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy guidelines.

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 PML 2015-007 or 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, October 1, 2016 to December 31, 2016, the CSLC reported 81 units comprised of 726 active employees during the October 2016 pay period, 81 units comprised of 732 active employees during the November 2016 pay period, and 81 units comprised of 724 active employees during the December 2016 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
October 2016	6	134	117	0
November 2016	4	54	47	0
December 2016	2	14	11	0

FINDING NO. 14 – Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

Summary: CSLC 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. However, the CSLC failed to provide completed Leave Activity and Correction Certification forms for 3 out

of 3 units reviewed during the October, November and December 2016 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” (CalHR Online Manual Section 2101). CalHR also dictates that departments 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 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 CSLC states that Personnel Transactions staff utilized an internal procedure for auditing individual attendance records and leave rather than utilizing the Leave Activity and Correction Certification form.

Action: The CSLC has implemented corrective measures by incorporating the standardized Leave Activity and Correction Certification form into the internal leave auditing procedure with regular oversight of leave accounting practices to be conducted; therefore, no further action is required at this time.

Leave Reduction Efforts

Departments must comply with the regulations that require a written leave plan for every employee with leave balances over established limits. (Cal. Code Regs., tit. 2, § 599.742.1 and applicable MOU sections).

Additionally, in accordance with PML 2016-029, 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 and are actively reducing hours.

As of December 31, 2017, the CRU's review of leave accounting records identified 81 employees who exceeded established limits of vacation or annual leave. The CRU reviewed 11 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 ⁶	Leave Reduction Plan Provided
District Sales Supervisor, California State Lottery	S01	1,146	Yes
Lottery Manager	S01	156	Yes
Lottery Manager	S01	1,117.5	Yes
Warehouse Worker	R12	848	Yes
Staff Information Systems Analyst (Specialist)	R01	116.75	Yes
Staff Program Analyst (Specialist)	R01	131.25	Yes
Lottery Ticket Sales Supervisor	S04	233.25	Yes
Lottery Manager	S01	872.25	Yes
C.E.A	M01	1,382	Yes
District Sales Representative, California State Lottery	R01	597.5	Yes
Program Technician	R04	45.75	Yes
Total Hours		6,646.25	

FINDING NO. 15 – Leave Reduction Policy was not Provided to Employees Whose Leave Balances Exceeded Established Limits

Summary: The CSLC did not provide a general departmental policy addressing leave reduction to its employees.

⁶ As of December 31, 2016.

Criteria: It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation, ensuring employees maintain the capacity to optimally perform their jobs. (Cal. Code Regs., tit. 2, §§ 599.742, 599.742.1). 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, for reasons other than those listed in sections 599.737 and 599.738 of these regulations 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 PML 2016-029, “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. The CSLC failed to comply with the state leave reduction plan in accordance with CalHR’s policies and guidelines. To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate a healthy work-life balance by granting reasonable employee vacation and annual leave requests when operationally feasible..

Cause: The CSLC states that a written leave balance management policy is not in place; however, it believes its existing leave balance management process is otherwise compliant with applicable laws, rules, and policies.

Action: The CSLC has submitted a corrective action plan for ensuring compliance with CalHR PML 2016-029; therefore, no further action is required at this time.

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 service⁷ (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 employees⁸ shall be allowed credit for annual leave with pay (Cal. Code Regs., tit. 2, § 599.752).

Permanent Intermittent employees earn vacation according to the preceding schedule for each increment of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period are not counted or accumulated.

During the period under review, April 1, 2016 to December 31, 2016, the CSLC processed four 715 transactions⁹. The CRU reviewed all 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 Transaction code 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 Pay Period	Full Time	4

FINDING NO. 16 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the CSLC 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 (PML, “Statewide Guidance on Nepotism Policies,” 2015-14).

The CRU reviewed the CSLC nepotism policy that was in effect during the compliance review period to ensure it was disseminated to all staff and emphasized that the CSLC is committed to the State policy of recruiting, hiring and assigning employees on the basis of merit.

FINDING NO. 17 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the CSLC's nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the CSLC's commitment to the State policy of recruiting, hiring and assigning employees on the basis of merit. However, the CRU encourages the CSLC to incorporate an internal process for employees to file complaints related to nepotism as well as a process for working assignments that conflict with the CSLC Nepotism policy.

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 (State Fund) 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 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, the CSLC did not employ volunteers during the compliance review period.

As such, the CRU reviewed the CSLC Workers' Compensation process that was in effect during the compliance review period to verify that the CSLC 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. 18 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

After reviewing the CSLC’s Workers’ Compensation process that was in effect during the compliance review period, the CRU verified that the CSLC provides notice to their employees to inform them of their rights and responsibilities under CA workers’ compensation law. Additionally, the CRU verified that when the CSLC received workers’ compensation claims, the CSLC properly provided claim forms within one working day of notice or knowledge of injury.

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 five permanent CSLC 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. 19 – Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations, and CalHR Policies and Guidelines

Summary: The CRU found no deficiencies in the five performance appraisals selected for review. Accordingly, the CSLC performance appraisal policy and processes satisfied civil service laws, Board rules and CalHR policies and guidelines.

DEPARTMENTAL RESPONSE

The CSLC’s response is attached as Attachment 1.

SPB REPLY

Based on the CSLC’s written response and corrective action plans submitted, the CSLC will comply with the CRU findings and recommendations.

Headquarters
700 North Tenth Street
Sacramento, CA 95811



ATTACHMENT 1

March 25, 2019

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

Dear Ms. Ambrose,

The California State Lottery Commission (Lottery) has reviewed the Draft Compliance Review Report (Report), prepared by the State Personnel Board (SPB), Compliance Review Unit (CRU). The Report summarizes the CRU's findings pertinent to the various review periods covering calendar years 2015, 2016, and part of 2017.

In general, we find the Report to be a thorough analysis and accurate characterization of processes that existed during the time periods reviewed. We are committed to correcting all deficiencies noted in the Report. The Lottery remains dedicated to compliance with all EEO, personal services, hiring requirements and best practices to ensure compliance with the merit system and applicable rules and regulations.

As requested by the CRU, attached are the Lottery's responses necessary to complete the final report, including the causes of the noted deficiencies as well as actions we have already taken to address them. If you have any questions, please contact our Personnel Officer, Inez Navarrete at 916-822-8408.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Fernandez', with a long, sweeping underline.

Chris Fernandez
Deputy Director, Human Resources

FINDING NO. 1 - Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Cause: Due to the minimal number of documents identified as not properly retained during the review period, the Lottery does not believe this finding is indicative of a systemic retention problem. Instead, it is likely the result of human error made in the course of normal business.

Response: The Lottery will review current procedures and make any necessary adjustments to ensure all NOPAs and other personnel related documentation are filed promptly and appropriately.

FINDING NO. 3 - Sufficient Justification Was Not Provided for All Personal Services Contracts

Cause: The Lottery notes that good faith efforts were made to properly document the reasons why these contracts satisfied Government Code section 19130; justification memos and personal service justification forms were prepared and maintained for each contract, describing the procurement and indicating which specific condition(s) applied under Government Code section 19130(b). To the extent that this finding nonetheless may be accurate, we believe any deficiency was due to a lack of clarity on the part of the Lottery regarding the level of detail and specificity required by the SPB to satisfy this requirement.

Response: In November 2018, the Lottery implemented stricter standards for personal services justifications, requiring divisions to clearly state why the selected condition(s) of Government Code § 19130(b) are applicable, and to provide additional supporting facts where needed. The Lottery is also preparing additional training on personal services contracting for the Lottery's contract managers and deputy directors.

FINDING NO. 4 - Unions Were Not Notified in a Timely Manner (Personal Services Contracts)

Cause: With respect to the Lottery's service agreement with Universal Window Cleaning, the delay in providing notice appears to be due to oversight. The remaining five contracts identified were purchase orders; with respect to these contracts, the delay was due in part to limitations in the Lottery's procurement software, which prevented the Lottery from generating draft purchase orders that could be provided to the unions prior to execution. The Lottery's procurement staff were not sufficiently trained on the statutory notice requirement to identify the need for a work-around process.

Response: In December 2018, the Lottery implemented a new procedure to ensure advance union notification for purchase orders. The Lottery is now sending justification memos to the appropriate unions, along with a quote from the proposed vendor, prior to executing a purchase order. In addition, as part of its current procurement software upgrade, the Lottery will be working with the vendor to add draft purchase order functionality. Lastly, the Lottery is preparing additional training on personal services contracting for the Lottery's procurement staff.

FINDING NO. 5 - Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: During the review period, the Lottery's Equal Employment Opportunity (EEO) Office was comprised of one position and was challenged by turnover. Consequently, the position was vacant for significant portions of the compliance period as the Lottery had difficulty attracting candidates with the requisite knowledge, skills and abilities. During the review period, Lottery relied upon the online training offered periodically by the Department of Fair Employment and Housing (DFEH); however, not everyone was able to take advantage of the DFEH training when offered. When the position was vacant, the department's limited resources were focused on ensuring EEO complaints were addressed appropriately and timely.

Response: The Lottery agrees that the sexual harassment prevention training of some of its supervisors and managers was not timely. The Lottery hired an EEO Officer in March of 2017 and the EEO Officer began conducting EEO compliance training as required by AB 1825, AB 2053 and SB 396 for all managers and supervisors in February 2018. As of the date of this response, the Lottery is in the process of increasing the staffing of its EEO Office by hiring a Staff Services Manager III and an EEO Analyst to ensure adherence to applicable EEO regulations and mandates.

FINDING NO. 6 - Incorrect Application of Salary Determination Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: Lottery concedes that during the review period a lack of both appropriate salary determination training and additional review procedures led to the one identified salary determination error.

Response: In 2018, the Lottery created a new Personnel Compliance Analyst position which is responsible for review of personnel transitions and processing for compliance with applicable laws, rules, and policies, including review of all salary determinations. Additionally, Human Resources Division staff will attend salary determination training provided by the State Controller's Office as soon as the training is made available.

FINDING NO. 7 - Incorrect Application of Alternate Range Movements

Cause: Errors documented in this finding were the result of the personnel transactions staff not properly keying the new anniversary date at the time of range change movement and/or Classification and Pay analysts incorrectly applying alternate range placement regulations upon appointment. The Lottery concedes that during the review period a lack of both appropriate alternate range movement training and additional review procedures led to the identified salary determination errors.

Response: In 2018, the Lottery created a new Personnel Compliance Analyst position which is responsible for review of personnel transactions and processing for compliance with applicable laws, rules, and policies, including review of all alternate range movements and placements. Personnel Transactions staff have been trained on the appropriate keying of alternate range

movement to include revision of the MSA date. Classification and Pay analysts have been trained on correct application of alternate range placement regulations. Additionally, the aforementioned Personnel Compliance Analyst whose primary responsibility will be oversight/review of complex transactions and salary determinations prior to managerial review.

FINDING NO. 9 - Incorrect Authorization of Arduous Pay

Cause: Respectfully, the Lottery does not agree with this finding. The Lottery believes arduous pay was appropriately authorized in accordance with the pay differential, based upon information available to the Lottery at the time. Furthermore, at the time of the arduous pay in 2016, the Lottery consulted with staff from CalHR regarding the circumstances giving rise to the arduous pay.

Response: To ensure appropriate application of the arduous pay differential in the future, Human Resources Division staff have been briefed on the Report finding and were reminded of the explicit criteria associated with approval of arduous pay. Additionally, Lottery will request written approval from CalHR prior to utilizing the arduous pay differential in the future.

FINDING NO. 10 - Incorrect Authorization of Bilingual Pay

Cause: The Lottery's bilingual pay program is administered via partnership between its EEO Office and Human Resources Division. At the time of the CRU's review the Lottery was in the process of revamping its internal bilingual certification and pay procedure. This finding is the result of a lack of an internal operating procedure.

Response: The Lottery is in the final stages of development of an internal bilingual certification and pay procedure aligned with the requirements set forth by the pay differential and CalHR guidelines. This procedure includes verification of the 10% threshold, receipt of the bilingual exam certification, and duty statement language identifying bilingual responsibilities prior to approval. The Personnel Compliance Analyst will conduct regular reviews to ensure compliance.

FINDING NO. 11 - Incorrect Authorization of Pay Differential

Cause: As a result of an oversight by Personnel Transactions staff, a recruitment and retention pay differential from a previous position was not removed at the time of appointment for a current Lottery employee. The Lottery concedes that during the review period a lack of additional review procedure led to the identified pay differential being erroneously paid to the employee.

Response: Human Resources Division staff have corrected the error and removed the pay differential. The employee will be notified of the overpayment and an account receivable established. Personnel Transactions staff have been trained regarding proper application and review of pay differentials. Additionally, the Personnel Compliance Analyst will conduct regular reviews of pay differential transactions to ensure adherence to applicable laws, rules, and policies.

FINDING NO. 12 - Incorrect Authorization of Out of Class (OOC) Pay

Cause: In the error identified by the CRU, Personnel Transactions staff made an error in keying OOC pay, resulting in an underpayment of 11 days of OOC pay. The Lottery concedes that during the review period a lack of additional review procedure led to the identified underpayment. However, the Lottery does not believe this finding is indicative of an incorrect authorization of OOC pay; instead, it is a keying error made in the course of normal business.

Response: The Lottery diligently reviews all OOC requests and approves only when appropriate based upon applicable laws, rules, and policies. The Lottery will process the additional 11 days of OOC pay for the impacted employee. Additionally, the Personnel Compliance Analyst will conduct regular reviews of OOC pay.

FINDING NO. 14 - Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records

Cause: Human Resources Division, Personnel Transactions staff, are responsible for administering leave activity. During the review period personnel transactions staff utilized an internal procedure for auditing individual attendance records and leave rather than utilizing the Leave Activity and Correction Certification form.

Response: The Lottery has incorporated the standardized Leave Activity and Correction Certification form into the internal leave auditing procedure. Additionally, the Personnel Compliance Analyst will conduct regular reviews of leave accounting practices.

FINDING NO. 15 - Leave Reduction Policy Was Not Provided to Employees Whose Leave Balances Exceeded Established Limits

Cause: A written leave balance management policy is not in place; however, the Lottery believes its existing leave balance management process is otherwise compliant with applicable laws, rules, and policies.

Response: Per Lottery's existing leave balance management process, on an annual basis, all Lottery employees with balances in excess of established limits are required to submit a leave reduction plan. The Lottery currently has a draft leave balance management policy under review.