



COMPLIANCE REVIEW REPORT

OFFICE OF ADMINISTRATIVE LAW

Compliance Review Unit
State Personnel Board
September 20, 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 departments through the Board's decisions, rules, policies, and consultation.

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Office of Administrative Law (OAL) personnel practices in the areas of appointments, and EEO from January 1, 2015, through June 30, 2016, and mandated training from July 1, 2014, through June 30, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for All Appointments	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations	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 OAL is responsible for reviewing administrative regulations proposed by over 200 state regulatory agencies for compliance with standards set forth in California's Administrative Procedure Act (APA), for transmitting these regulations to the Secretary of State, and for publishing regulations in the California Code of Regulations. The OAL is also responsible for posting links on its website to other state agency websites where the public may find regulations that have been recently filed with the Secretary of State, but have not yet gone into effect. The OAL assists state regulatory agencies through a formal training program, as well as through other less formal methods, to understand and comply with the APA. Through its Reference Attorney service, the OAL provides direct legal advice to state agencies and members of the public regarding California rulemaking law.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing OAL appointments, and EEO program from January 1, 2015, through June 30, 2016, and mandated training from July 1, 2014, through June 30, 2016. The primary objective of the review was to determine if OAL personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The OAL did not conduct any examinations during the compliance review period. The OAL also did not execute any PSC's during the compliance review period subject to the Department of General Services approval and thus our procedural review.¹

¹ 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.

A cross-section of OAL 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 OAL provided, which included notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the OAL 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).

In addition, the OAL'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 prevention training within statutory timelines.

The OAL declined to have an exit conference. The CRU received and carefully reviewed the OAL's written response on September 16, 2016, 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 compliance review period, the OAL made three appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Assistant Chief Counsel	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Office Technician (Typing)(LEAP)	Certification List	Temporary	Full Time	1

FINDING NO. 1 – Probationary Evaluations Were Not Provided for All Appointments

Summary: The OAL did not prepare, complete, and/or retain one required probationary report of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Assistant Chief Counsel	Certification List	1	1

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of

progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The OAL states that it did not have a formal tracking system in place during the compliance review period to ensure timely completion of probationary reports.

Action: The OAL has submitted a corrective action plan for ensuring full compliance in meeting the probationary requirements of Government Code section 19172 as part of its department response, 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 (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.)

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. In a state agency with less than 500 employees, like the OAL, the EEO Officer may be the Personnel Officer.

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

The CRU reviewed the OAL EEO program that was 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 OAL'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 OAL. In addition, the OAL has an established DAC that reports to the director on issues affecting persons with a disability. The OAL 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 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 OAL's mandated training program that was in effect during the compliance review period.

FINDING NO. 3 – Mandated Training Complied with Statutory Requirements

The OAL provided ethics training to its one new filer within six months of appointment and semi-annual ethics training to its three existing filers during two-year calendar year

period commencing in 2014. The OAL also provided supervisory training to its one new supervisor within 12 months of appointment. In addition, the OAL provided sexual harassment prevention training its one new supervisor within six months of appointment, and sexual harassment prevention training to its three existing supervisors every two years. Thus, the OAL complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The OAL's response is attached as Attachment 1.

SPB REPLY

Based upon the OAL's written response, the OAL will comply with the CRU recommendations and findings. The OAL submitted a corrective action plan for the one departmental finding that was out of compliance.

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

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DEBRA M. CORNEZ
Director



To: State Personnel Board, Compliance Review Unit

From: Debra M. Cornez, Director

Date: September 16, 2016

Re: Compliance Review Report

The Compliance Review Unit (CRU) of the State Personnel Board conducted a routine compliance review of the Office of Administrative Law (OAL) personnel practices in the areas of appointments, and EEO from January 1, 2015, through June 30, 2016, and mandated training from July 1, 2014, through June 30, 2016. The primary objective of the review was to determine if OAL personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified. The CRU identified one problem area.

FINDING NO. 1 – Probationary Evaluation Were Not Provided for All Appointments

Summary: The OAL did not prepare, complete, and/or retain one required probationary report of performance for the Assistant Chief Counsel.

Cause: Due to heavier than usual workload for several months, the first probation report was overlooked by the Assistant Chief Counsel's supervisor and the due date of May 4, 2016, expired. On August 30, 2016, the first probation report for the Assistant Chief Counsel was completed.

The other two findings by CRU were "in compliance"; therefore, no cause or response is required by OAL.

DEPARTMENTAL RESPONSE

Up until this time, OAL did not have a formal tracking system in place to ensure timely completion of probationary reports. OAL recognizes the importance of the probationary period and the need to evaluate its employees to ensure the successful performance of the duties assigned. OAL has now implemented a formal tracking system to enable each supervisor to monitor the due dates of probation reports so that the reports are completed in a timely manner. The Staff Services Manager II will also monitor the same formal tracking system and send a reminder of an upcoming probation report seven days before its due date to each appropriate supervisor. OAL will also annually prepare and send a memo to all supervisors in the office reminding them of the importance of competing probation reports. OAL submits this corrective action plan to ensure compliance with the probationary requirements of Government Code section 19172.