



# **COMPLIANCE REVIEW REPORT**

## **OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

Compliance Review Unit  
State Personnel Board  
March 28, 2022

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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.

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

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

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

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

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the Office of Environmental Health Hazard Assessment (OEHHA)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examination Complied with Civil Service Laws and Board Rules
Appointments	Very Serious	Equal Employment Opportunity Questionnaire Was Not Separated from Application
Equal Employment Opportunity	Very Serious	A Disability Advisory Committee Has Not Been Established <sup>1</sup>
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers <sup>2</sup>
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Alternate Range Movement Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Repeat finding. February 12, 2019, the OEHHA's compliance review report identified the department does not have an active Disability Advisory Committee. In addition, April 20, 2015, the OEHHA's compliance review report identified that the department did not have an established DAC during the review period.

<sup>2</sup> Repeat finding. February 12, 2019, the OEHHA's compliance review report identified ethics training was not provided to 13 of the 32 new filers within six months of their appointment. In addition, the OEHHA did not provide ethics training to 1 of 120 existing filers.

Area	Severity	Finding
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Very Serious	Incorrect Authorization of Pay Differentials
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Administrative Time Off Was Not Properly Documented
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely <sup>3</sup>
Policy	Very Serious	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Very Serious	Workers' Compensation Policy Was Not Provided to New Employees by the End of First Pay Period
Policy	Serious	Performance Appraisals Were Not Provided to All Employees <sup>4</sup>

### **BACKGROUND**

<sup>3</sup> Repeat finding. February 12, 2019, the OEHHA's compliance review report identified the department failed to implement a monthly internal audit process to verify all leave input is keyed accurately and timely.

<sup>4</sup> Repeat finding. February 12, 2019, the OEHHA's compliance review report identified 6 missing performance appraisals of the 9 employees reviewed.

The OEHHA's principle mission is to protect and enhance the health of Californians and the state's environment through scientific evaluations which inform, support, and guide regulatory decisions and other actions. The OEHHA performs risk assessments for various regulatory programs under the California Environmental Protection Agency, as well as other state and local agencies, and provides these programs with scientific tools and information upon which to base risk-management decisions. Distinct programs focus on assessing hazards and health risks, including risks to children and other sensitive subpopulations, from exposure to chemicals in air, drinking water, food, pesticides, consumer products, and fish and shellfish, as well as health and environmental impacts from climate change. The OEHHA also evaluates community pollution burdens and vulnerabilities which guide the state's efforts to invest in disadvantaged communities and reduce exposures and risks to residents.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the OEHHA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>5</sup>. The primary objective of the review was to determine if the OEHHA'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.

A cross-section of the OEHHA's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the OEHHA provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OEHHA did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the OEHHA'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 OEHHA provided, which included Notice of Personnel Action forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The OEHHA did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the OEHHA did not make any additional appointments during the compliance review period.

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<sup>5</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The OEHHA's appointments were also selected for review to ensure the OEHHA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the OEHHA provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the OEHHA did not issue or authorize red circle rate requests, or arduous pay.

The review of the OEHHA's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The OEHHA's PSC's were also reviewed.<sup>6</sup> It was beyond the scope of the compliance review to make conclusions as to whether the OEHHA's justifications for the contracts were legally sufficient. The review was limited to whether the OEHHA's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The OEHHA'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, managers, and CEAs were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the OEHHA's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the OEHHA's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review the CRU reviewed a selection of the OEHHA employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU

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<sup>6</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

reviewed a selection of OEHHA positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the OEHHA did not have any employees with non-qualifying pay period transactions.

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

On February 10, 2022, an exit conference was held with the OEHHA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the OEHHA's written response on February 28, 2022, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, March 1, 2020, through November 30, 2020, the OEHHA conducted one examination. The CRU reviewed the examination listed below for compliance with applicable laws and rules.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Supervising Toxicologist (Managerial)	CEA	Training and Experience (T&E)	05/29/20	3

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATION COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed one departmental open examination which the OEHHA administered in order to create an eligible list from which to make appointments. The OEHHA published and distributed the examination bulletin containing the required information for the examination. Applications received by the OEHHA were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examination that the OEHHA conducted during the compliance review period.

### **Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

<b>VERY SERIOUS</b>	<b>FINDING NO. 3<sup>7</sup></b>	<b>EQUAL EMPLOYMENT OPPORTUNITY QUESTIONNAIRE WAS NOT SEPARATED FROM APPLICATION</b>
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**Summary:** Out of 24 appointments reviewed, 1 appointment file included an application where an EEO questionnaire was not separated from the STD 678 employment application. Specifically, 1 of the 2 applications reviewed for this appointment included an EEO questionnaire that was not separated from the STD 678 employment application.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

**Severity:** Very Serious. The applicant’s protected classes were visible, subjecting the agency to potential liability.

**Cause:** The OEHHA states that its Retired Annuitant hires are made through either the Boomerang system or by re-hiring previous OEHHA employees. The applicant sends their application directly to Human Resources (HR). The EEO questionnaire was not removed once received by HR prior to being scanned to the electronic file. The

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<sup>7</sup> Finding No. 2, Probationary Evaluations Were Not Provided for All Appointments Reviewed, was removed from the final report after the OEHHA reported that the one missing probationary report belonged to an employee who no longer worked at the department. Thus, the OEHHA would no longer have access to the employee’s official personnel file to provide a copy of the probationary report.

OEHHA further states the application uploaded to SPB's portal for the audit was not shared with anyone outside of HR within OEHHA.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that future EEO questionnaires are separated from all applications. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### **Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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, subd. (a).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like OEHHA, 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).)

<b>VERY SERIOUS</b>	<b>FINDING NO. 4 A DISABILITY ADVISORY COMMITTEE HAS NOT BEEN ESTABLISHED</b>
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**Summary:** The OEHHA does not have an active DAC. This is the third consecutive time this has been a finding for the OEHHA.

**Criteria:** 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).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency’s ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The OEHHA states that it continues to have an active DAC that has been in place prior to the audit. The intranet page showing the members and the day of the month for the monthly meetings was submitted for review on February 18, 2022. There are no official minutes for the meetings, but the co-chairs take hand notes, as needed. The co-chairs will be alerted official note-taking is a requirement to ensure official notes are recorded moving forward. The DAC continues to send out monthly emails informing staff of various DAC related items.

**SPB Reply:** Despite multiple requests during the course of the review regarding the existence of its DAC, the OEHHA did not produce sufficient documentation supporting that it has an active DAC, including providing copy of the invitation to all employees to serve on the committee, any type of meeting minutes, or meeting schedule.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the

corrections the department will implement, moving forward, the continued establishment of a DAC, ensuring that it is comprised of members who have disabilities or are interested in disability issues, and which provides the head of the agency issues of concern for employees who have a disability. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and meeting minutes, must be included with the corrective action response.

### **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, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

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

During the period under review, March 1, 2020, through November 30, 2020, the OEHHA had 19 PSC's that were in effect. The CRU reviewed 19 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
California State University, East Bay Foundation, Inc.	Technical advice on chemical risk assessment methods and applications	06/01/2019 - 04/30/2021	\$44,609	Yes	Yes
The Regents of the University of California, Berkeley	Literature Review/Food Dye	01/01/2019 - 01/31/2021	\$221,498	Yes	Yes
University of California, Davis - Department of Environmental Toxicology	Investigate the endocrine disrupting properties of chemical substance	06/01/2018 - 11/30/2020	\$377,642	Yes	Yes
Mentor Resources Inc.	Mentoring Software to Develop, Manage, Track, Train and Provide Consultation	06/04/2020 - 04/30/2022	\$33,500	Yes	Yes
The Regents of the University of California	Organize Workshop on Key Characteristics of Hazardous Chemicals	06/20/2019 - 05/31/2021	\$677,950	Yes	Yes
The Regents of the University of California	Assessing Community Exposures to Air Pollution in California	05/01/2020 - 04/30/2022	\$449,809	Yes	Yes
The Regents of the University of California	Dietary exposure to pesticides	06/15/2008 - 06/26/2021	\$54,900	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
California State University, East Bay Foundation, Inc.	Technical advice on chemical risk assessment methods and applications	06/01/2019 - 04/30/2021	\$44,609	Yes	Yes
California State University Sacramento - College of Continuing Education	Climate Change Indicators Workshop Consultation	01/02/2020 - 06/30/2021	\$30,000	Yes	Yes
Regents of the University of California, San Diego	Techniques to characterize wildfire-specific impacts on respiratory health in California	05/01/2020 - 07/31/2021	\$148,279	Yes	Yes
The Regents of the University of California	Identifying Environmental Factors that Influence Immune Response and COVID Susceptibility	05/01/2020 - 07/31/2021	\$172,858	Yes	Yes
The Regents of the University of California	Pilot Air Quality Study for Vallejo	05/01/2020 - 04/30/2022	\$49,999	Yes	Yes
University of California, Davis	Climate Indicators, Winter Chill, and Develop climate change indicator web-based tool	06/01/2020 - 06/30/2021	\$49,966	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
California State University, East Bay Foundation, Inc.	Technical advice on chemical risk assessment methods and applications	06/01/2019 - 04/30/2021	\$44,609	Yes	Yes
West Publishing Corporation dba, West, A Thomson Reuters Business	Electronic Library Services	07/01/2020 - 06/30/2021	\$10,500	Yes	Yes
Regents of the University of California	Pesticide Illness Surveillance Program	07/01/2020 - 06/30/2022	\$192,500	Yes	Yes
The Regents of the University of California	Accreditation of Online Pesticide Course for Physicians and Nurses	07/01/2020 - 06/30/2022	\$7,059	Yes	Yes
Cooperative Personnel Services dba CPS HR Consulting	Open Enrollment, Onsite Group Training, Live Virtual Instructor-Led Group Training	07/01/2020 - 06/30/2023	\$44,055	Yes	Yes
California State University Sacramento - College of Continuing Education	Climate Change Indicators Workshop Consultation	12/01/2019 - 06/30/2020	\$30,000	Yes	Yes
Regents of the University of California	Field Sample Analysis	07/01/2016 - 07/31/2021	\$3,261,766	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
California State University, East Bay Foundation, Inc.	Technical advice on chemical risk assessment methods and applications	06/01/2019 - 04/30/2021	\$44,609	Yes	Yes
The Regents of the University of California, San Francisco	Analysis and interpretation of biomonitoring data from pregnant women in Fresno, California	05/01/2019 - 11/01/2020	\$327,322	Yes	Yes

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS</b>
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The total dollar amount of all the PSC’s reviewed was \$6,184,212.00. It was beyond the scope of the review to make conclusions as to whether OEHHA’s justifications for the contract were legally sufficient. For all PSC’s reviewed, the OEHHA provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, OEHHA complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the OEHHA PSC’s complied with civil service laws and board rules.

**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.)

Additionally, new supervisors must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

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 OEHHA's mandated training program that was in effect during the compliance review period, December 1, 2018, through November 31, 2020. The OEHHA's ethics training and the OEHHA's sexual harassment prevention training were found to be out of compliance.

<b>VERY SERIOUS</b>	<b>FINDING NO. 6</b>	<b>ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The OEHHA did not provide ethics training to 12 of 43 existing filers. In addition, the OEHHA did not provide ethics training to 13 of 21 new filers within six months of their appointment. This is the second consecutive time this has been a finding for the OEHHA.

**Criteria:** New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

**Severity:** Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

**Cause:** The OEHHA states that there were a number of certificates that are listed as missing and available for submittal upon request. There are listed filers for whom OEHHA no longer has access to their OPF; therefore certificates could not be retrieved. For the other missing certificates, the OEHHA states that it will send more than one follow-up email in hopes the filer will complete the training.

**SPB Reply:** Despite multiple document requests during the course of the review relative to mandated ethics training of its employees, the OEHHA did not produce documentation supporting the 25 employees who did not receive ethics training had completed the training, or that the employees' training certificates were not available as they had transferred to another agency.

**Corrective Action:** Within 90 days of this report, the OEHHA must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

<b>VERY SERIOUS</b>	<b>FINDING NO. 7</b>	<b>SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The OEHHA did not provide sexual harassment prevention training to 9 of 10 new supervisors within 6 months of their appointment. In addition, the OEHHA did not provide sexual harassment prevention training to 1 of 11 existing supervisors every 2 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, subds. (a) and (b); Gov. Code, § 19995.4.)

**Severity:** Very Serious. The department does not ensure that all new and existing 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 OEHHA states OEHHA no longer has access to the OPF for three supervisors; therefore, certificates could not be retrieved. For supervisors with late dates of completion, improved follow-up

measures will be followed to ensure completion is met prior to the due date.

**SPB Reply:** Despite multiple document requests during the course of the review relative to mandated sexual harassment prevention training of its employees, the OEHHA did not produce documentation indicating that the 9 employees either had completed the training later or that the employees' training certificates were not available as they had transferred to another agency.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that all employees are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## **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<sup>8</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, December 1, 2019, through August 31, 2020, the OEHHA made 27 appointments. The CRU reviewed 8 of those appointments to determine if the OEHHA applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

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<sup>8</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Supervisor I	List Appointment	Permanent	Full Time	\$8,000.00
Research Scientist I (Epi/Bio)	List Appointment	Permanent	Full Time	\$6,050.00
Research Scientist II (Epi/Bio)	List Appointment	Permanent	Full Time	\$8,424.18
Research Scientist III (Epi/Bio)	List Appointment	Permanent	Full Time	\$9,012.50
Research Scientist III (Epi/Bio)	List Appointment	Permanent	Full Time	\$7,474.71
Senior Toxicologist	List Appointment	Permanent	Full Time	\$11,144.60
Senior Toxicologist	List Appointment	Permanent	Full Time	\$11,144.60
Senior Toxicologist	List Appointment	Permanent	Full Time	\$13,219.02

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The OEHHA appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

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, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules 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, March 1, 2020, through November 30, 2020, one OEHHA employee made an alternate range movement within a classification. The CRU reviewed this alternate range movement, noted below, to determine if the OEHHA applied salary regulations accurately and correctly processed the employee’s compensation.

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Public Health Medical Officer II	B	C	001/002	\$11,228

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9</b>	<b>ALTERNATIVE RANGE MOVEMENT COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movement the OEHHA made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department’s program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>9</sup> (Gov. Code, § 19836, subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, an employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, December 1, 2019, through August 31, 2020, the OEHHA authorized three HAM requests. The CRU reviewed three of those authorized HAM requests to determine if the OEHHA correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

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<sup>9</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Research Scientist III	List Appointment	Permanent	\$7,257 - \$9,084	\$8,750
Research Scientist II	List Appointment	Permanent	\$6,645 - \$8,259	\$8,259
Senior Environmental Scientist (Specialist)	List Appointment	Permanent	\$6,816 - \$8,479	\$8,100

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the OEHHA made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

### Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 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, not 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, March 1, 2020, through November 30, 2020, the OEHHA issued bilingual pay to one employee. The CRU reviewed this bilingual pay authorization, listed below, to ensure compliance with applicable CalHR policies and guidelines.

Classification	Bargaining Unit	Time Base	No. of Appts.
Staff Toxicologist (Specialist)	R10	Full Time	1

<b>VERY SERIOUS</b>	<b>FINDING NO.</b> <b>11</b>	<b>INCORRECT AUTHORIZATION OF BILINGUAL PAY</b>
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**Summary:** The CRU found one error in the OEHHA’s authorization of bilingual pay:

Classification	Description of Finding(s)	Criteria
Staff Toxicologist (Specialist)	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14

**Criteria:** For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

**Severity:** Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

**Cause:** The OEHHA states the listed employee has been receiving bilingual pay for an extended period of time that dates back to over 12 years. Documents were already destroyed at the beginning of the audit, consistent with the department’s records retention rules.

**SPB Reply:** Pay Differential 14 provides that “All departments are required to maintain information and comment files of all positions qualified to receive bilingual pay for audit purposes.” Without this information, the CRU could not verify that the employee is eligible to receive bilingual pay.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 7296, and Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### 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 might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service 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, March 1, 2020, through November 30, 2020, the OEHHA issued pay differentials<sup>10</sup> to 78 employees. The CRU reviewed 37 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	# of Employees	Pay Differential	Monthly Amount
Associate Toxicologist	2	Educational Pay Differential	3%

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<sup>10</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	# of Employees	Pay Differential	Monthly Amount
Environmental Program Manager I (Supervisory)	1	Educational Pay Differential	3%
Environmental Scientist	1	Educational Pay Differential	3%
Research Scientist II (Epidemiology/Biostatistics)	1	Educational Pay Differential	3%
Research Scientist III (Epidemiology/Biostatistics)	5	Educational Pay Differential	3%
Research Scientist IV (Epidemiology/Biostatistics)	2	Educational Pay Differential	3%
Research Scientist Supervisor I (Epidemiology/Biostatistics)	1	Educational Pay Differential	3%
Senior Environmental Scientist (Specialist)	3	Educational Pay Differential	3%
Senior Toxicologist	3	Educational Pay Differential	3%
Staff Toxicologist (Specialist)	15	Educational Pay Differential	3%
Supervising Toxicologist (Managerial)	1	Educational Pay Differential	3%

<b>VERY SERIOUS</b>	<b>FINDING NO. 12</b>	<b>INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS</b>
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**Summary:** The CRU found errors in all 37 of the pay differentials reviewed. Specifically, all were missing substantiation to support the pay differential. In order to qualify for the educational incentive pay, employees shall have a Master’s Degree, Doctoral Degree or a degree of Doctor of Medicine from an accredited institution. (Pay Differential 434)

**Criteria:** A pay differential may be appropriate when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or recruitment and retention. (CalHR Classification and Pay Manual Section 230.)

**Severity:** Very Serious. The OEHHA 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 OEHHA states prior to receiving list eligibility for the listed classifications, the required degree is verified through the examination unit of the administering entity. The verification for the listed employees was completed prior to receiving list eligibility. Those documents were not available as the documents were already destroyed due to the records retention rules or the OEHHA exam section was not the administering entity for the exam.

**SPB Reply:** As Pay Differential 434 provides that the degrees must come from an accredited institution, the CRU could not verify that the OEHHA's employees listed above are eligible to receive an educational pay differential. The employee's Official Personnel File should contain documentation justifying active pay differentials.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 434 and ensure that employees are compensated correctly and that transactions are keyed accurately. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Out-of-Class Assignments and Pay

For excluded<sup>11</sup> and most rank and file employees, out-of-class (OOC) 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. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

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<sup>11</sup> "Excluded employee" means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

According to the 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 the California Code of Regulations, title 2, section 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 provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, March 1, 2020, through November 30, 2020, the OEHHA issued OOC pay to five employees. The CRU reviewed five of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	CBID	Out-of-Class Classification	Time Frame
Staff Toxicologist (Specialist)	R10	Senior Toxicologist	03/16/20 - 05/14/20
Staff Toxicologist (Specialist)	R10	Senior Toxicologist	05/15/20 - 05/31/20
Staff Toxicologist (Specialist)	R10	Senior Toxicologist	02/18/20 - 04/17/20
Staff Toxicologist (Specialist)	R10	Senior Toxicologist	01/14/20 - 03/13/20
Staff Toxicologist (Specialist)	R10	Senior Toxicologist	04/20/20 - 06/18/20

<b>IN COMPLIANCE</b>	<b>FINDING NO. 13 OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the OOC pay assignments that the OEHHA authorized during the compliance review period. OOC pay was issued appropriately to employees 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.

**Leave**

**Positive Paid Employees**

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee’s time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting

time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>12</sup> worked and paid absences<sup>13</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the OEHHA had 10 positive paid employees whose hours were tracked. The CRU reviewed 10 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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<sup>12</sup> For example, two hours or ten hours count as one day.

<sup>13</sup> For example, vacation, sick leave, compensating time off, etc.

Classification	Tenure	Time Frame	Time Worked
Associate Personnel Analyst	Retired Annuitant	April 8, 2020 - June 30, 2020	424 hours
Associate Personnel Analyst	Retired Annuitant	April 8, 2020 - June 30, 2020	319 hours
Senior Environmental Scientist(Specialist)	Retired Annuitant	July 1, 2019 - June 30, 2020	437 hours
Staff Toxicologist (Specialist)	Retired Annuitant	July 1, 2019 - June 30, 2020	575 hours
Staff Toxicologist (Specialist)	Retired Annuitant	July 1, 2019 - June 30, 2020	883.3 hours
Staff Toxicologist (Specialist)	Retired Annuitant	July 1, 2019 - June 30, 2020	216 hours
Staff Toxicologist (Specialist)	Retired Annuitant	July 1, 2019 - June 30, 2020	689 hours
Staff Toxicologist (Specialist)	Retired Annuitant	May 14, 2020 - June 30, 2020	155 hours
Supervising Toxicologist (Managerial)	Retired Annuitant	July 1, 2019 - June 30, 2020	719.5 hours
Supervising Toxicologist (Managerial)	Retired Annuitant	July 1, 2019 - June 30, 2020	754.75 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 14 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The OEHHA provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

#### Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, 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. (*ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*ibid.*)

During the period under review, September 1, 2019, through August 31, 2020, the OEHHA placed 41 employees on ATO. The CRU reviewed 19 of these ATO authorizations to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

<b>SERIOUS</b>	<b>FINDING NO. 15 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED</b>
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**Summary:** The OEHHA did not grant ATO in conformity with the established policies and procedures. Of the 19 ATO authorizations reviewed by the CRU, all were found to be out of compliance for failing to document justification for ATO.

**Criteria:** Appointing authorities are authorized to approve ATO for up to five (5) working days. (Gov. Code, § 19991.10.) Furthermore, they “have delegated authority to approve up to 30 calendar days.” (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

**Severity:** Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure policy compliance. Findings of non-compliance may result in the revocation of delegated privileges.

**Cause:** The OEHHA states that all ATO authorizations were approved according to the established guidelines for the Supplemental Paid Sick Leave (SPSL). However, the completed staff forms were not sent to protect medical information. The OEHHA states that it has the form used for the approval process that can be submitted upon request.

**SPB Reply:** Human Resources Manual section 2127 provides that substantiation is required for school or child care closures, and that normal procedures should be followed for other SPSL reasons. Despite multiple document requests during the course of the review relative to ATO, the OEHHA did not produce justification documentation as required by Human Resources Manual 2121. Furthermore, there is always the option of redacting protected health information when providing supporting documentation.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19991.10 and Human Resources Manual Section 2121. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

#### 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.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) 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. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error

occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, June 1, 2020, through August 31, 2020, the OEHHA reported 18 units comprised of 140 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
June 2020	160	19	19	0
July 2020	114	11	11	0
August 2020	145	19	19	0

<b>SERIOUS</b>	<b>FINDING NO. 16 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY</b>
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**Summary:** The OEHHA has not established a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary. Additionally, one timesheet did not match what was entered into the Leave Accounting System. This is the second consecutive time this has been a finding for the OEHHA.

**Criteria:** Each appointing power shall 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.) Departments are directed to create an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall identify and record all errors found and shall certify that all leave records for the unit/pay period identified have been reviewed and all leave errors identified have been corrected. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

**Severity:** Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and

timeliness. Failure to audit leave could put the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

**Cause:** The OEHHA states that once the State Controller's Office has released the monthly Leave Activity Balance (LAB) reports, an email is sent to the supervisors and leave support staff. The email contains the LAB reports and CalHR 139 form. They are given a 10-day turnaround to audit the LAB report against the employee's timesheet and complete the CalHR 139 form accordingly to return to HR. The OEHHA states that this process has been in place since the implementation of the CalHR 139 form.

**SPB Reply:** While the OEHHA asserts it has a process in place to verify all leave input is keyed accurately and timely, as this is the second consecutive time this has been a finding, it is clear that the OEHHA's established process is insufficient to achieve compliance in this area.

**Corrective Action:** While the OEHHA provides it has a process in place that achieves compliance in this area. Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department has implemented to ensure that their monthly internal audit process was documented and that all leave input is keyed accurately and timely. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## **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. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) 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. (*Ibid.*)

Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

<b>VERY SERIOUS</b>	<b>FINDING NO. 17 DEPARTMENT DOES NOT MAINTAIN A CURRENT WRITTEN NEPOTISM POLICY</b>
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**Summary:** The OEHHA does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

**Criteria:** It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring, and assigning employees on the basis of merit. (*Ibid.*)

**Severity:** Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

**Cause:** The OEHHA states that it will work to bring the older nepotism policy in compliance to line up with all the necessary information as required.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

## Workers' Compensation

Employers shall provide to every new employee, either 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. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) 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. (*Ibid.*)

<b>VERY SERIOUS</b>	<b>FINDING NO. 18</b>	<b>WORKERS' COMPENSATION POLICY WAS NOT PROVIDED TO NEW EMPLOYEE BY THE END OF FIRST PAY PERIOD</b>
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**Summary:** The OEHHA does not provide specific notices to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law.

**Criteria:** Employers shall provide to every new employee at the time of hire or by the end of the first pay period written notice concerning the rights, benefits, and obligations under Workers' Compensation law. (Cal. Code of Regs., tit. 8, § 9880.)

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

**Cause:** The OEHHA states that The State of California New Employee's Guide to Workers' Compensation is a part of the package for newly

appointed OEHHA employees. It is unsure why/how this was missed at the beginning of the audit period.

**SPB Reply:** Despite multiple document requests during the course of the review relative to Workers' Compensation, the OEHHA did not produce any of the requested documentation to demonstrate compliance in this area.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 8, section 9880. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers 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 37 permanent OEHHA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Accounting Officer / Specialist	6/2/2019
Administrative Assistant II	12/7/2019
Associate Business Management Analyst	6/12/2019
Associate Governmental Program Analyst	8/24/2019
Associate Governmental Program Analyst	3/1/2019
Associate Governmental Program Analyst	5/1/2019
Associate Governmental Program Analyst	6/17/2019
Business Services Specialist	8/5/2019

Classification	Date Performance Appraisals Due
Environmental Scientist	11/1/2019
Information Technician Associate	12/19/2019
Information Technician Specialist I	1/30/2019
Office Technician (Typing)	4/26/2019
Public Health Medical Officer II	4/6/2019
Public Health Medical Officer III	4/26/2019
Research Scientist I / (Epidemiology/Biostatistics)	1/13/2019
Research Scientist III / (Epidemiology/Biostatistics)	8/2/2019
Research Scientist III / (Epidemiology/Biostatistics)	12/21/2019
Research Scientist III (Epidemiology/Biostatistics)	3/30/2019
Senior Personnel Specialist	10/4/2019
Senior Environmental Scientist (Specialist)	10/17/2019
Senior Environmental Scientist (Specialist)	7/3/2019
Staff Services Manager I	6/15/2019
Staff Services Manager I	12/7/2019
Senior Toxicologist	8/21/2019
Senior Toxicologist	9/1/2019
Senior Toxicologist	9/19/2019
Supervisor Toxicologist / Manager	1/4/2019
Supervisor Toxicologist / Manager	2/25/2019
Supervisor Toxicologist / Manager	6/16/2019
Staff Toxicologist (Specialist)	3/3/2019
Staff Toxicologist (Specialist)	3/1/2019
Staff Toxicologist (Specialist)	12/17/2019
Staff Toxicologist (Specialist)	9/8/2019
Staff Toxicologist (Specialist)	4/12/2019
Staff Toxicologist (Specialist)	5/1/2019
Staff Toxicologist (Specialist)	7/2/2019
Staff Toxicologist (Specialist)	4/25/2019

<b>SERIOUS</b>	<b>FINDING NO. 19 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The OEHHA did not provide annual performance appraisals to 10 of 37 employees reviewed after the completion of the employee’s probationary period.

**Criteria:** Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

**Severity:** Serious. The department does not ensure that all of its employees are appraised of work performance issues and/or goals in a systematic manner.

**Cause:** The OEHHA states that it is in the midst of finalizing a coordinated process with the other Boards and Departments under the CalEPA umbrella to improve OEHHA’s current process of ensuring the Performance Appraisal Summary are received for all employees.

**Corrective Action:** Within 90 days of the date of this report, the OEHHA must submit to the SPB a written corrective action response which addresses the corrections the department has implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

**DEPARTMENTAL RESPONSE**

The OEHHA’s response is attached as attachment one.

## **SPB REPLY**

Based upon the OEHHA's written response, the OEHHA will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response, including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.



Gavin Newsom, Governor  
Jared Blumenfeld, Secretary for Environmental Protection  
Lauren Zeise, Ph.D., Director

February 28, 2022

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

Dear Ms. Ambrose:

The Office of Environmental Health Hazard Assessment (OEHHA) is in receipt of the draft State Personnel Board (SPB) Compliance Review Report. OEHHA recognizes the importance of the evaluations to ensure personnel practices are properly applied and adhered to in accordance with civil service laws, rules and regulations.

OEHHA acknowledges the findings in the draft Compliance Review Report. Detailed below are the compliance findings along with OEHHA's response to each finding.

**Finding No. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED – OEHHA Response:** The listed employee no longer works for OEHHA so there is no access to the Official Personnel File (OPF) to retrieve the probationary report.

**Finding No. 3 EQUAL EMPLOYMENT OPPORTUNITY (EEO) QUESTIONNAIRE WAS NOT SEPARATED FROM APPLICATION – OEHHA Response:** OEHHA Retired Annuitant (RA) hires are made through either Boomerang or by re-hiring previous OEHHA employees. Once the Request for Personnel Action is approved, the RA will send their application directly to Human Resources (HR). Unfortunately the EEO questionnaire was not removed once received by HR prior to being scanned to the electronic file. The application uploaded to SPB's portal for the audit was not shared with anyone outside of HR within OEHHA.

**Finding No. 4 A DISABILITY ADVISORY COMMITTEE (DAC) HAS NOT BEEN ESTABLISHED – OEHHA Response:** OEHHA continues to have an active DAC that has been in place prior to the audit. The intranet page showing the members and the day of the month for the monthly meetings was submitted to Sophia Gonzalez on February 18th. There are no official minutes for the meetings, but the co-chairs take hand notes, as needed. The co-chairs will be alerted official note taking is a

requirement to ensure official notes are recorded moving forward. The DAC continues to send out monthly emails informing staff of various DAC related items.

Finding No. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS – OEHHA Response: One line entry showed the certificate date of completion prior to the appointment to the position listed. Completion of ethics training is valid for two years. This date was within one year prior to the appointment. There were a number of certificates that are listed as missing and available for submittal upon request. There are listed filers that OEHHA no longer has access to the OPF so certificates could not be retrieved. For the other missing certificates OEHHA will send more than one follow-up email in hopes the filer will complete the training.

Finding No. 7 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS – OEHHA Response: OEHHA no longer has access to the OPF for three supervisors so certificates could not be retrieved. For supervisors with late dates of completion, improved follow-up measures will be followed to ensure completion is met prior to the due date.

Finding No. 11 INCORRECT AUTHORIZATION OF BILINGUAL PAY – OEHHA Response: The listed employee has been receiving Bilingual Pay for an extended period of time that dates back to over 12 years. Documents were already destroyed at the beginning of the audit, consistent with our records retention rules.

Finding No. 12 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS – OEHHA Response: Prior to receiving list eligibility for the listed classifications, the required degree is verified through the examination unit of the administering entity. The verification for the listed employees was completed prior to receiving list eligibility. Those documents were not available as the documents were already destroyed due to the records retention rules or the OEHHA exam section was not the administering entity for the exam.

Finding No. 15 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED – OEHHA Response: All ATO authorizations were approved according to the established guidelines for the Supplemental Paid Sick Leave. However, the completed staff forms were not sent to protect medical information. OEHHA has the form used for the approval process that can be submitted upon request.

Finding No. 16 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY – OEHHA Response: Once the State Controller's Office has released the monthly Leave Activity Balance (LAB) reports, an email is sent to the supervisors and leave support staff. The email contains the LAB report(s) and CalHR 139 form. They are given a 10-day turnaround to audit the LAB report against the employee's timesheet and complete the CalHR 139 form accordingly to return to HR. This process has been in place since the implementation of the CalHR 139 form.

Finding No. 17 DEPARTMENT DOES NOT MAINTAIN A CURRENT WRITTEN NEPOTISM POLICY – OEHHA Response: OEHHA will work to bring the older nepotism policy in compliance to line up with all the necessary information as required.

Finding No. 18 WORKERS COMPENSATION POLICY WAS NOT PROVIDED TO NEW EMPLOYEE BY THE END OF FIRST PAY PERIOD – OEHHA Response: The State of California New Employee's Guide to Workers' Compensation is a part of the package for newly appointed OEHHA employees. It is unsure why/how this was missed at the beginning of the audit period.

Finding No. 19 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES – OEHHA Response: OEHHA is in the midst of finalizing a coordinated process with the other Boards and Departments under the CalEPA umbrella to improve OEHHA's current process of ensuring the Performance Appraisal Summary (PAS) are received for all employees. The process completion date is targeted to coincide with the due date for this year's collection of PAS.

Suzanne M. Ambrose, Executive Officer  
February 28, 2022  
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Thank you again for the opportunity to respond to the Draft Compliance Review Report. If you have any questions, please contact Cassandra Willis, Chief, Human Resources Branch, at (916) 324-2234 or by email at [Cassandra.Willis@oehha.ca.gov](mailto:Cassandra.Willis@oehha.ca.gov).

Sincerely,



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Mike Gyurics (Feb 28, 2022 16:54 PST)

Mike Gyurics  
Deputy Director  
Administrative Services Division

cc: Cassandra Willis  
Chief, Human Resources Branch  
Office of Environmental Health Hazard Assessment