



# **COMPLIANCE REVIEW REPORT**

## **GOVERNMENT OPERATIONS AGENCY**

Compliance Review Unit  
State Personnel Board  
July 21, 2021

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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 Government Operations Agency (GovOps) 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	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed <sup>1</sup>
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contract <sup>2</sup>
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or 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	Very Serious	Incorrectly Posted Leave Usage and/or Leave Credit

<sup>1</sup> Repeat finding. The February 21, 2019, GovOps' compliance review report identified three missing probation reports in three of seven appointment files reviewed.

<sup>2</sup> Repeat finding. The February 21, 2019, GovOps' compliance review report identified three missing union notifications for the three PSC's executed.

Area	Severity	Finding
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees <sup>3</sup>

### **BACKGROUND**

The GovOps is responsible for coordinating state operations, including procurement, information technology, and human resources. The agency's goal is to improve management and accountability of government programs, increase efficiency, and promote better and more coordinated operational decisions within government. The GovOps administers the Office of Digital Innovation, and oversees the following state agencies:

- Office of Administrative Law
- Department of General Services
- Department of Human Resources
- Franchise Tax Board
- Department of Tax and Fee Administration
- Department of Technology
- Public Employees' Retirement System
- State Personnel Board
- State Teachers' Retirement System
- Victim Compensation Board

The CalHR performs human resources functions and the Franchise Tax Board performs EEO functions for the GovOps.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the GovOps' examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave,

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<sup>3</sup> Repeat finding. The February 21, 2019, the GovOps' compliance review report identified did not provide performance appraisals to the two employees reviewed.

and policy and processes<sup>4</sup>. The primary objective of the review was to determine if the GovOps' 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 GovOps' 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 GovOps provided, which included examination plans, examination bulletins, job analyses, and scoring results. The GovOps did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the GovOps' 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 GovOps 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 GovOps did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the GovOps did not make any additional appointments during the compliance review period.

The GovOps' appointments were also selected for review to ensure the GovOps applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the GovOps 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 personnel functions related to compensation and pay for out-of-class assignments.

During the compliance review period, the GovOps did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements.

The review of the GovOps' EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal

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<sup>4</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The GovOps' PSC's were also reviewed.<sup>5</sup> It was beyond the scope of the compliance review to make conclusions as to whether the GovOps' justifications for the contracts were legally sufficient. The review was limited to whether the GovOps' practices, policies, and procedures relative to PSC's complied with procedural requirements.

The GovOps' 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 Career Executive Assignments (CEA) were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the GovOps' Leave Activity and Correction Certification forms to verify that the GovOps created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the GovOps' units in order to ensure they maintained accurate and timely leave accounting records. Further, the CRU reviewed a selection of GovOps' 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 GovOps did not have any employees with non-qualifying pay period transactions. The GovOps also did not authorize Administrative Time Off.

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

On June 24, 2021, an exit conference was held with the GovOps to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the GovOps' written response on July 8, 2021, which is attached to this final compliance review report.

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<sup>5</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.

## 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, January 1, 2020, through December 31, 2020, the GovOps conducted one examination. The CRU reviewed that examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA C, Deputy Director, Head of Talent	CEA	Statement of Qualifications <sup>6</sup>	Until Filled	18

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<sup>6</sup> In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.



<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed the one open examination which the GovOps administered in order to create eligible lists from which to make appointments. The GovOps published and distributed examination bulletins containing the required information for the examination. Applications received by the GovOps 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 GovOps 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).)

During the period under review, January 1, 2020, through December 31, 2020, the GovOps made two appointments. The CRU reviewed those two appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The GovOps did not provide all three probationary reports of performance for one of the two appointments reviewed by the CRU, as reflected in the table below. This is the second consecutive time this has been a finding for the GovOps.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Certification List	1	3

**Criteria:** The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

**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 GovOps states that, despite methods used by Human Resources to inform supervisors of the requirements to complete probationary reports, not all supervisors provided timely probationary reports.

**Corrective Action:** As this is the second consecutive time this has been a finding for GovOps, it is the expectation that it develops a meaningful and measurable plan to achieve compliance in this area. Within 90 days of the date of this report, the GovOps must submit to the SPB a written corrective action response which addresses the specific corrections the department has or will implement to ensure conformity with California Code of Regulations, title 2, section 599.795. 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 the GovOps, 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>IN COMPLIANCE</b>	<b>FINDING NO. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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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 GovOps' EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Secretary of the GovOps. The GovOps also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

### **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, January 1, 2020, through December 31, 2020, the GovOps had 37 PSC's that were in effect. The CRU reviewed 13 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
10th Avenue Consulting	Communications Consultant	3/20/20-5/20/20	\$45,000.00	Yes	N/A <sup>7</sup>
Avantpage	Translation/Localization	4/22/20-4/22/21	\$550,000.00	Yes	N/A
Civic Actions	Product Design	11/19/20-5/19/20	\$249,999.00	Yes	No
Corey Mahoney	Information Technology	4/6/20-8/30/20	\$9,990.00	Yes	N/A
David Guarino	Information Technology	6/8/20-11/30/20	\$46,500.00	Yes	N/A
Jeffery Marino	Insights Program Manager	5/28/20-4/30/21	\$143,412.00	Yes	N/A
Layer Aleph	Information Technology	8/10/20-8/9/21	\$2,000,000.00	Yes	N/A
Margaret Gartin	Information Technology	4/14/20-12/31/20	\$104,400.00	Yes	N/A
Nonlocal, Inc.	Graphic Designer	8/1/20-3/29/21	\$99,999.00	Yes	N/A
Patrick Tyler Haas	Data Analyst	5/1/20-12/31/20	\$68,988.00	Yes	N/A
Patrick Tyler Haas	Data Analyst	5/1/20-2/28/21	\$23,680.00	Yes	N/A
Rebecca Sanjabi	Data Engineer	9/25/20-5/31/21	\$99,456.00	Yes	N/A
Tangible UX, LLC	Data Graphics Designer	4/22/20-8/22/21	\$134,365.85	Yes	N/A

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACT</b>
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**Summary:** The GovOps did not notify unions prior to entering into one of the 13 PSC's reviewed. This is the second consecutive time this has been a finding for the GovOps.

<sup>7</sup> The PSC's listed as "N/A" in the union notification column were emergency contracts, which do not require union notification pursuant to Government Code section 19132, subdivision (b)(1).

**Criteria:** The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

**Severity:** Serious. Unions must be notified of impending PSC's in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.

**Cause:** The GovOps states that the unions were not notified due to human error.

**Corrective Action:** As this is the second consecutive time this has been a finding for GovOps, it is the expectation that it develops a meaningful and measurable plan to achieve compliance in this area. It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. The GovOps provides it will develop a contract processing checklist which must be filled out prior to execution of any personal service contracts. Within 90 days of the date of this report, the GovOps must submit to the SPB written documentation demonstrating the corrections the department has implemented to ensure conformity with the requirements of Government Code section 19132.

### **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 GovOps’ mandated training program that was in effect during the compliance review period, January 1, 2019, through June 30, 2020.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5</b>	<b>MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b>
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The GovOps provided ethics training to its one new filer within six months of appointment and, for eight existing filers, “at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter.” The GovOps provided sexual harassment prevention training to its one new supervisor within six months of appointment, and sexual harassment prevention training to its eight existing supervisors every two years. Thus, the GovOps complied with mandated training requirements within statutory timelines.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code 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.

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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).

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, January 1, 2020, through December 31, 2020, the GovOps made two appointments. The CRU reviewed those two appointments to determine if the GovOps applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,149.00
Staff Services Manager I	Transfer	Permanent	Full Time	\$7,608.00

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 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 GovOps 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.

Out-of-Class Assignments and Pay

For excluded<sup>9</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>9</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, January 1, 2020, through December 31, 2020, the GovOps issued OOC pay to one employee. The CRU reviewed the OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines, which is listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Attorney IV	R02	Deputy Secretary General Counsel	7/1/20-8/1/20

<b>IN COMPLIANCE</b>	<b>FINDING NO. 7</b>	<b>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 GovOps 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>10</sup> worked and paid absences<sup>11</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 1,500 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 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2,000 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 GovOps had three positive paid employees whose hours were tracked. The CRU reviewed all three of those positive paid appointments to ensure

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<sup>10</sup> For example, two hours or ten hours count as one day.

<sup>11</sup> For example, vacation, sick leave, compensating time off, etc.

compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Special Consultant	Temporary	4/1/20-11/25/20	151 Days
Special Consultant	Temporary	7/1/20-3/1/21	150 Days
Special Consultant	Retired Annuitant	6/22/20-6/30/21	56 Hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 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 GovOps provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

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, July 1, 2020, through September 30, 2020, the GovOps reported three units comprised of 21 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
July 2020	100	19	19	0
August 2020	100	21	21	0
September 2020	100	21	21	0

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING No. 9 INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT</b>
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**Summary:** The GovOps did not correctly enter 3 of 42 timesheets into the Leave Accounting System during the July and September 2020 pay periods. As a result, two employees retained their prior leave balance despite having used leave credits, and one employee lost a total of four hours of leave.

**Criteria:** Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) 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.*)

**Severity:** Very serious. Errors in posting leave usage and/or leave credits puts 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 GovOps states the cause as human error and not receiving corrected timesheets in a timely manner.

**Corrective Action:** The GovOps provides that Personnel Specialists have been trained to cross-check work to ensure timesheet accuracy. Within 90 days of the date of this report, the GovOps must submit to the SPB written documentation which addresses the corrections the department has implemented to ensure conformity with Human Resources Manual Section 2101.

**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>IN COMPLIANCE</b>	<b>FINDING No.10 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the GovOps’ commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the GovOps’ nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

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.*) In this case, the GovOps did not employ volunteers during the compliance review period.

IN COMPLIANCE	<b>FINDING NO.11 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the GovOps provides notice to their employees to inform them of their rights and responsibilities under California’s Workers’ Compensation Law. Furthermore, the CRU verified that when the GovOps received workers’ compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

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 three permanent GovOps 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
Staff Services Analyst	3/4/2020
Staff Services Manager I	2/24/2020
Staff Services Manager II	8/24/2020

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.12 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The GovOps did not provide annual performance appraisals to any of the three employees reviewed after the completion of the employees' probationary period. This is the second consecutive time this has been a finding for the GovOps.

**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 apprised of work performance issues and/or goals in a systematic manner.

**Cause:** The GovOps states that, despite methods used by Human Resources to inform supervisors of the requirement to complete performance appraisals, not all supervisors provided timely performance appraisals due to the agency being highly involved with COVID-19 response.

**Corrective Action:** As this is the second consecutive time this has been a finding for GovOps, it is the expectation that it develops a meaningful and measurable plan to achieve compliance in this area. Within 90 days of the date of this report, the GovOps 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 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 GovOps' response is attached as Attachment 1.

### **SPB REPLY**

Based upon the GovOps's written response, the GovOps 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.





Administrative Services

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**Governor** Gavin Newsom  
**Secretary, Government Operations Agency** Yolanda Richardson  
**Director** Eraina Ortega

July 7, 2021

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

Re: Government Operations Agency Response to Draft State Personnel Board  
Compliance Report

Dear Ms. Ambrose,

The Government Operations Agency (GovOps) has received the draft of the State Personnel Board's (SPB) Compliance Review Report. Based on the compliance review conducted by the Compliance Review Unit (CRU) of GovOps' personnel practices in the areas of Examinations, Appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, Mandated Training, Compensation and Pay, Leave, and Policy and Processes, the Government Operations Agency provides the following response to each of the findings presented by SPB.

**Finding No. 2: Probationary evaluations were not provided for all appointments reviewed**

The summary by the CRU indicated that GovOps did not provide all three probationary reports of performance for one of the two appointments reviewed by the CRU.

**Cause:** Despite the methods used by Human Resources to inform supervisors of the requirements to complete probationary reports, not all supervisors provided timely probationary reports.

**GovOps Response:** Currently, Human Resources sends memos to all supervisors informing them of probationary report due dates when they hire a probationary employee. Moving forward, in addition to the memos, Human Resources will send out a reminder to supervisors before the due date of a probationary report. Moving forward, GovOps will set an expectation that immediately upon receipt of the memo, supervisors will document the probationary dates by any means necessary to ensure that they are aware of due dates and submit probationary reports timely. In addition, the GovOps leadership team will emphasize the importance of completing probationary reports in

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Richardson

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management meetings.

**Finding No. 4: Unions were not notified of personal services contracts**

The summary by the CRU indicated that unions were not notified by GovOps prior to entering into one of 13 of the personal services contracts reviewed.

**Cause:** Despite current workflow processes one contract was not properly forwarded to the unions prior to execution. This was due to staff error.

**GovOps Response:** GovOps recognizes the importance of forwarding personal services contracts to the unions prior to executing such agreements. Moving forward, GovOps will develop a contract processing checklist that must be filled out prior to execution of any personal service contracts. That checklist will include the required step of notifying the unions of the forthcoming contract.

**Finding No. 9: Incorrectly posted leave usage and/or leave credit**

The summary by the CRU indicated that The GovOps did not correctly enter 3 of 42 timesheets into the Leave Accounting System during the July and September 2020 pay periods. As a result, two employees retained their prior leave balance despite having used leave credit, and one employee lost a total of four hours of leave.

**Cause:** These errors are due to human error and not receiving corrected timesheets in a timely manner.

**GovOps Response:** GovOps and CalHR will work on gathering, organizing, and verifying all timesheets have been received and accurately reflect time used. Personnel Specialists have been trained to now cross-check work for accuracy of timesheets entered into the Leave Accounting System.

**Finding No. 12: Performance appraisals were not provided to all employees**

The summary by the CRU indicated that GovOps did not provide annual performance appraisals to all three employees reviewed after the completion of the employees' probationary period.

**Cause:** Despite the methods used by Human Resources to inform supervisors of the requirements to complete performance appraisals, not all supervisors provided timely performance appraisals. Notably, the review period covered a timeframe wherein

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GovOPS was highly involved with response related to COVID-19, which also contributed to performance appraisals not being completed.

**GovOps Response:** GovOps recently developed a policy for performance appraisals, which all employees will be responsible for reading and acknowledging. GovOps will ensure that all supervisors and managers understand how to implement the policy, and the leadership team will emphasize the importance of completing performance appraisals in management meetings.

**Prior report:** [GovOpsFinalReport.pdf \(ca.gov\)](#)

Sincerely,

Stephanie Hees

Stephanie Hees  
Chief of Human Resources, CalHR  
[Stephanie.hees@calhr.ca.gov](mailto:Stephanie.hees@calhr.ca.gov)  
916-323-6062

The Corrective Action Response (CAR) is an opportunity for departments to demonstrate necessary steps have been implemented to correct the non-compliant Findings (deficiency) found as a result of the Compliance Review.

For each non-compliant Finding, refer to the Corrective Action section of that Finding in the review report. Copies of relevant documentation demonstrating that the Corrective Action has been or is in the process of being corrected must be included with the CAR. Examples include, but are not limited to, updated internal policies or procedures (should be included for most findings), a training log for mandated training, and/or any new or updated forms, plans, or documents that have been implemented.

## CORRECTIVE ACTION RESPONSE

DEPARTMENT: Government Operations Agency (GovOPS)	BRANCH/DIVISION/PROGRAM:
CONTACT PERSON (NAME AND TITLE): Stephanie Hees, Chief of Human Resources, CalHR	CORRECTIVE ACTION RESPONSE DATE: 10/21/2021

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation	Actual or Estimated Completion Date	Is a copy of the updated Policy or Procedure Included?
<b>FINDING NO. 2: PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>	<ol style="list-style-type: none"> <li>When the personnel specialist sends probationary memos to the supervisor, they will CC the assigned HR Analyst. The HR Analyst will then calendar the due dates and send a reminder email to the supervisor on each due date.</li> <li>GovOps leadership team will emphasize the importance of completing probationary reports in management meetings.</li> </ol>	Ongoing as new employees serving probationary periods are hired.	<ol style="list-style-type: none"> <li>Attached email to HR staff regarding prob memos and tracking.</li> <li>Attach reminder email to GovOPS leadership to emphasize importance of probs</li> </ol>
<b>FINDING NO. 4: UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>	Before non-emergency contracts are entered into the contract manager will notify the union by sending them a copy of the contract.	Implemented	Attached is the policy.

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
<b>FINDING NO. 9: INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT</b>	<ol style="list-style-type: none"> <li>1. Personnel Specialists have been trained to now cross-check work for accuracy of timesheets entered into the Leave Accounting System.</li> <li>2. LAB reports are sent to GovOPS manager and HR Liaisons.</li> </ol>	Ongoing as timesheets are received.	<ol style="list-style-type: none"> <li>1. Specialists review each other's work in LAS monthly.</li> <li>2. LAB reports are sent once per month to HR Liaisons to distribute to management.</li> </ol>
<b>FINDING NO. 12: PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>	<ol style="list-style-type: none"> <li>1. GovOps recently developed a policy for performance appraisals, which all employees will be responsible for reading and acknowledging.</li> <li>2. GovOps will ensure that all supervisors and managers understand how to implement the policy, and the leadership team will emphasize the importance of completing performance appraisals in management meetings.</li> </ol>	HR notifies GovOPS management in December of upcoming PA due date. PAs are due January 31 <sup>st</sup> each year.	<ol style="list-style-type: none"> <li>1. Updated policy to clarify due date of PAs (January 31<sup>st</sup>).</li> <li>2. Attached reminder email is used to remind supervisors/managers of PA each year.</li> </ol>