



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY**

Compliance Review Unit  
State Personnel Board  
July 14, 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 California Health and Human Services Agency (CalHHS) 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  |
| Examinations                 | In Compliance | Permanent Withhold Actions Complied with Civil Service Laws and Board Rules                            |
| Appointments                 | Technical     | Promotion-in-Place Was Not Properly Documented   |
| Appointments                 | Technical     | Appointment Documentation Was Not Kept for the Appropriate Amount of Time                              |
| Appointments                 | Technical     | Department Did Not Provide Benefit Information in Accordance with Civil Service Law                    |
| Equal Employment Opportunity | In Compliance | Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules              |
| 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>1</sup>   |
| Mandated Training            | Very Serious  | Sexual Harassment Prevention Training Was Not Provided for All Employees <sup>2</sup>                  |
| Mandated Training            | Very Serious  | Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs                          |
| Compensation and Pay         | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |

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<sup>1</sup> Repeat finding. The November 5, 2019, CalHHS Compliance Review Report identified the CalHHS did not provide ethics training to their one existing filer.

<sup>2</sup> Repeat finding. The November 5, 2019, CalHHS Compliance Review Report identified 9 of 13 existing supervisors did not receive sexual harassment prevention training and 2 of 4 new supervisors did not receive the training within 6 months of their appointment.

| Area                 | Severity      | Finding  |
|----------------------|---------------|--|
| Compensation and Pay | In Compliance | Alternate Range Movement Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines               |
| 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 Pay Differentials <sup>3</sup>  |
| 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                | In Compliance | Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines         |
| Leave                | In Compliance | Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines         |
| 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>4</sup>   |

### **BACKGROUND**

The CalHHS oversees 12 departments and 5 offices that provide health and social services to the most vulnerable and at-risk Californians, as well as providing public health

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<sup>3</sup> Repeat finding. The November 5, 2019, CalHHS Compliance Review Report identified one employee did not receive the correct rate for a pay differential.

<sup>4</sup> Repeat finding. The November 5, 2019, CalHHS Compliance Review Report identified 9 of 11 employees reviewed did not receive annual performance appraisals.

services to all Californians. Furthermore, the CalHHS has been leading the response to the COVID-19 pandemic along with the Governor’s Office of Emergency Services.

The CalHHS’s mission is to work together with counties, cities, and communities, as well as the public, private, faith, and educational partners to make California a healthy, vibrant, inclusive place to live, play, work, and learn.

The CalHHS has contracted with the Department of Social Services (DSS) to provide the majority of its human resources functions.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CalHHS’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 CalHHS’s and DSS’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 CalHHS’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 department provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the CalHHS’s permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the CalHHS’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 department provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions, vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CalHHS did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CalHHS 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 CalHHS's appointments were also selected for review to ensure that salary regulations were accurately and correctly implemented relative to employees' compensation and pay. The CRU examined the documentation that the department 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: HAM requests, monthly pay differentials, and alternate range movements. During the compliance review period, the CalHHS did not issue or authorize red circle rate requests, arduous pay, bilingual pay, or out-of-class assignments.

The review of the CalHHS'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; and the discrimination complaint process.

The CalHHS'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 justifications for the contracts were legally sufficient. The review was limited to whether the CalHHS's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CalHHS's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, that all supervisors, managers, and Career Executive Appointees (CEAs) were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the department'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 CalHHS's units in order to ensure accurate and timely leave accounting records were maintained. Part of this review also examined a cross-section of the CalHHS's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state

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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.

service credit. Additionally, the CRU reviewed a selection of the CalHHS employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of the CalHHS positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

On July 7, 2022, an exit conference was held with the CalHHS to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CalHHS's written response on July 1, 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, February 1, 2021, through January 31, 2022, the CalHHS conducted five examinations. The CRU reviewed the five examinations, which are listed below:

| Classification  | Exam Type | Exam Components                                | Final File Date | No. of Apps |
|---|-----------|--|-----------------|-------------|
| CEA B, Assistant Secretary  | CEA       | Statement of Qualifications (SOQ) <sup>7</sup> | 5/19/21         | 11          |
| CEA B, Assistant Secretary of Program and Fiscal Affairs          | CEA       | SOQ  | 11/15/21        | 5           |
| CEA B, Assistant Secretary – Special Projects                     | CEA       | SOQ  | 10/22/21        | 16          |
| CEA B, Chief Equity Officer                                       | CEA       | SOQ  | 11/14/21        | 8           |
| CEA B, Deputy Director, Office of Youth and Community Restoration | CEA       | SOQ  | 10/4/21         | 18          |

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| <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 five CEA examinations which the department administered in order to create eligible lists from which to make appointments. Examination bulletins were published and distributed, and contained the required information. Applications received by the department 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 examinations that the CalHHS conducted during the compliance review period.

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<sup>7</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.

## Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, February 1, 2021, through January 31, 2022, the CalHHS conducted four permanent withhold actions . The CRU reviewed three of these permanent withhold actions, which are listed below:

| Exam Title                                    | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold   |
|---|---------|-----------------------------|-----------------------------|---------------------------------------|
| Associate Governmental Program Analyst (AGPA) | 9PB04   | 11/18/20                    | 11/18/21                    | Failed to meet minimum qualifications |
| AGPA  | 9PB04   | 11/30/20                    | 11/30/21                    | Failed to meet minimum qualifications |
| AGPA  | 9PB04   | 12/14/20                    | 12/14/21                    | Failed to meet minimum qualifications |

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| <b>IN COMPLIANCE</b> | <b>FINDING NO. 2 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b> |
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The CRU found no deficiencies in the permanent withhold actions undertaken by the department 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, February 1, 2021, through January 31, 2022, the CalHHS made 38 appointments. The CRU reviewed 15 of those appointments, which are listed below:

| Classification                          | Appointment Type   | Tenure       | Time Base | No. of Appts. |
|---|--------------------|--------------|-----------|---------------|
| AGPA                                    | Certification List | Limited Term | Full Time | 1             |
| Attorney III                            | Certification List | Permanent    | Full Time | 1             |
| Information Officer I (Specialist)      | Certification List | Permanent    | Full Time | 1             |
| Information Officer II                  | Certification List | Permanent    | Full Time | 1             |
| Investigator                            | Certification List | Permanent    | Full Time | 1             |
| Research Data Analyst I                 | Certification List | Limited Term | Full Time | 1             |
| Staff Services Analyst (SSA) (General)  | Certification List | Permanent    | Full Time | 1             |
| Staff Services Manager I                | Certification List | Permanent    | Full Time | 1             |
| Staff Services Manager II (Supervisory) | Certification List | Permanent    | Full Time | 1             |

| Classification                     | Appointment Type   | Tenure       | Time Base | No. of Appts. |
|------------------------------------|--------------------|--------------|-----------|---------------|
| Supervising Special Investigator I | Certification List | Permanent    | Full Time | 1             |
| AGPA                               | Transfer           | Limited Term | Full Time | 1             |
| Attorney                           | Transfer           | Limited Term | Full Time | 1             |
| Office Technician (Typing)         | Transfer           | Permanent    | Full Time | 1             |
| SSA (General)                      | Transfer           | Permanent    | Full Time | 1             |
| Staff Services Manager I           | Transfer           | Permanent    | Full Time | 1             |

|                                |   |
|--------------------------------|---|
| <b>SEVERITY:<br/>TECHNICAL</b> | <b>FINDING NO. 3 PROMOTION IN PLACE WAS NOT PROPERLY DOCUMENTED</b> |
|--------------------------------|---|

**Summary:** The CalHHS made one appointment utilizing the promotion in place (PIP) process in which the criteria specified in California Code of Regulations, title 2, section 242 was not met. Specifically, the department did not document that the selected employee demonstrated satisfactorily or higher job performance in their position, nor did they document that the employee had shown the ability and willingness to succeed at the higher level classification. In addition, the department did not document the reasons why the selected employee was chosen for the PIP. No other employees in the unit were eligible for a PIP.

**Criteria:** As mandated by California Code of Regulations, title 2, section 242, subdivision (a), a permanent employee may receive a promotion in place where all of the following apply:

- (1) The employee has demonstrated satisfactory or higher job performance in their current position and shown the ability and willingness to succeed at the higher level classification;
- (2) The position currently occupied by the employee is reallocated to the “to” class without a change in unit or location;
- (3) The employee competed in and passed an examination for the “to” class and is currently placed on the employment list for that examination in one of the top three ranks; and
- (4) The appointing power documents the reasons why the selected employee was chosen for the promotion in place.

**Severity:** Technical. Without documentation, the CRU could not verify if the appointment was properly conducted.

**Cause:** The CalHHS states the manager who promoted the employee in place focused more on the business need for the upgrade of the position and was unaware that the employee specific information was required in the justification.

**Action:** Within 90 days of the date of this report, the CalHHS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the PIP documentation requirements of California Code of Regulations, title 2, section 242. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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|--------------------------------|--|
| <b>SEVERITY:<br/>TECHNICAL</b> | <b>FINDING NO. 4 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR<br/>THE APPROPRIATE AMOUNT OF TIME</b> |
|--------------------------------|--|

**Summary:** The CalHHS failed to retain personnel records such as NOPA's, duty statements, job announcements/bulletins, and applications. Of the 15 appointments reviewed, the CalHHS did not retain 3 NOPA's.

**Criteria:** As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

**Severity:** Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

**Cause:** The CalHHS states that the NOPA's were not retained due to established retention procedures not being followed.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations,

title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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|--------------------------------|--|
| <b>SEVERITY:<br/>TECHNICAL</b> | <b>FINDING NO. 5 DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION<br/>IN ACCORDANCE WITH CIVIL SERVICE LAW</b> |
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**Summary:** Out of the 15 appointments reviewed by the CRU, the CalHHS did not provide an explanation of benefits to one applicant prior to acceptance of appointment. In addition, the CalHHS did not memorialize that applicants received an explanation of benefits, prior to appointment, in a formal offer of employment 12 times out of the 15 appointments reviewed by the CRU.

**Criteria:** An appointing power, before offering employment to an applicant, shall provide the applicant, in writing, with an explanation of benefits that accompany state service. These documents shall include a summary of the applicable civil service position with salary ranges and steps within them, as well as information on benefits afforded by membership in the Public Employees' Retirement System and benefits and protections provided to public employees by the State Civil Service Act. (Gov. Code § 19057.2.)

**Severity:** Technical. An applicant is entitled to have all of the information regarding benefits relating to their potential employment prior to making a decision as to whether to accept or decline the appointment.

**Cause:** The CalHHS acknowledges that they had not incorporated this step into their hiring process during the review time period.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the explanation of benefits requirements of Government Code section 19057.2. Copies of relevant documentation (including a template letter) 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 CalHHS, the EEO Officer may be the Personnel Officer.

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| <b>IN COMPLIANCE</b> | <b>FINDING NO. 6 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM<br/>COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD<br/>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 CalHHS's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Agency Secretary of the CalHHS.

**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, February 1, 2021, through January 31, 2022, the CalHHS had two PSC’s that were in effect. The CRU reviewed the two PSC’s, which are listed below:

| Vendor                                  | Services   | Contract Date(s)    | Contract Amount | Justification Identified? | Union Notification? |
|---|--|---------------------|-----------------|---------------------------|---------------------|
| California State University, Sacramento | Curriculum for the CalHHS Leadership Development Academy | 11/1/21 – 10/31/24  | \$251,569       | Yes                       | Yes                 |
| University Enterprises, Inc.            | Contract hiring of Student Assistants                    | 11/15/21 – 11/15/23 | \$117,417       | Yes                       | Yes                 |

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| <b>IN COMPLIANCE</b> | <b>FINDING NO. 7 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS</b> |
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The total dollar amount of all the PSC’s reviewed was \$368,985.76. It was beyond the scope of the review to make conclusions as to whether the justifications for the CalHHS’s contracts were legally sufficient. For all PSC’s reviewed, the CalHHS 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, the department provided proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the department’s 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.)

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

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

New employees 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 and non-supervisors one hour 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 CalHHS's mandated training program that was in effect during the compliance review period, February 1, 2020, through January 31, 2022.

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| <b>SEVERITY:<br/>VERY SERIOUS</b> | <b>FINDING NO. 8 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b> |
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**Summary:** The CalHHS provided ethics training to all five of their new filers within six months of their appointment. However, the CalHHS did not provide ethics training to 14 of 43 existing filers. This is the second consecutive time this has been a finding for the CalHHS.

**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 CalHHS states that despite their efforts to inform and remind filers of the training requirement, not all employees completed the training timely.

**Corrective Action:** Within 90 days of this report, the CalHHS 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.

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|-----------------------------------|---|
| <b>SEVERITY:<br/>VERY SERIOUS</b> | <b>FINDING NO. 9 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES</b> |
|-----------------------------------|---|

**Summary:** The CalHHS provided sexual harassment prevention training to its two new supervisors within six months of their appointment. However, the CalHHS did not provide sexual harassment prevention training to 4 of 18 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the CalHHS.

In addition, the CalHHS did not provide sexual harassment prevention training to 1 of 14 new non-supervisors within 6 months of their appointment. Further, the CalHHS did not provide sexual harassment prevention training to 12 of 43 existing non-supervisors every 2 years.

**Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory employees one hour of sexual harassment prevention training every two years. New employees 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 employees 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 CalHHS acknowledges that not all employees completed the required sexual harassment prevention training despite their process to notify employees of the training.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS 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.

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|-----------------------------------|---|
| <b>SEVERITY:<br/>VERY SERIOUS</b> | <b>FINDING NO. 10 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS</b> |
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**Summary:** The CalHHS did not provide leadership training to its two new CEAs within 12 months of appointment, and did not provide biennial leadership training to 6 of 11 existing supervisors, managers, and/or CEAs.

**Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subds. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (e).)

**Severity:** Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

**Cause:** The CalHHS states that despite their efforts to inform and remind supervisors of the training requirement, not all employees completed the training timely.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors, managers, and CEAs are provided leadership and

development training within twelve months of appointment, and that thereafter, they receive a minimum of 20 hours of leadership training biennially, as required by Government Code section 19995.4. 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, February 1, 2021, through January 31, 2022, the CalHHS made 38 appointments. The CRU reviewed seven of those appointments, listed below, to determine if salary regulations were applied accurately and correctly relative to CalHHS employees’ compensation.

| Classification                     | Appointment Type   | Tenure       | Time Base | Salary (Monthly Rate) |
|------------------------------------|--------------------|--------------|-----------|-----------------------|
| AGPA                               | Certification List | Limited Term | Full Time | \$5,383               |
| Information Officer I (Specialist) | Certification List | Permanent    | Full Time | \$5,652               |
| Investigator                       | Certification List | Permanent    | Full Time | \$6,572               |
| Staff Services Manager I           | Certification List | Permanent    | Full Time | \$7,772               |
| Supervising Special Investigator I | Certification List | Permanent    | Full Time | \$9,081               |
| SSA (General)                      | Transfer           | Permanent    | Full Time | \$5,360               |
| Staff Services Manager I           | Transfer           | Permanent    | Full Time | \$7,954               |

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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).

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 11 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b> |
|----------------------|--|

The CRU found no deficiencies in the salary determinations that were reviewed. The salaries for each CalHHS appointment were appropriately calculated and keyed; and, the employees' anniversary dates were correctly calculated, 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, February 1, 2021, through January 31, 2022, one alternate range movement, listed below, was made for a CalHHS employee. The CRU reviewed the alternate range movement to determine if salary regulations were applied accurately and correctly.

| Classification | Prior Range | Current Range | Time Base | Salary (Monthly Rate) |
|----------------|-------------|---------------|-----------|-----------------------|
| SSA (General)  | B           | C             | Full Time | \$4,476               |

|                      |   |
|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 12 ALTERNATIVE RANGE MOVEMENT COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b> |
|----------------------|---|

The CRU determined that the alternate range movement the department 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

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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.

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, February 1, 2021, through January 31, 2022, the CalHHS authorized three HAM requests. The CRU reviewed the three authorized HAM requests to determine if the CalHHS correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates’ extraordinary qualifications, which are listed below:

| Classification          | Appointment Type   | Status                 | Salary Range       | Salary (Monthly Rate) |
|-------------------------|--------------------|------------------------|--------------------|-----------------------|
| Attorney III            | Certification List | Former Exempt Employee | \$9,976 - \$12,798 | \$12,500              |
| Investigator            | Certification List | New to State           | \$4,762 - \$8,649  | \$8,649               |
| Research Data Analyst I | Certification List | New to State           | \$3,800 - \$5,885  | \$5,600               |

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 13 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 CalHHS made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

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, February 1, 2021, through January 31, 2022, the CalHHS authorized four pay differentials.<sup>10</sup> The CRU reviewed the four pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification                     | Pay Differential           | Monthly Amount |
|------------------------------------|----------------------------|----------------|
| Investigator                       | Education Differential Pay | \$125          |
| Investigator                       | Education Differential Pay | \$125          |
| Supervising Special Investigator I | Education Differential Pay | \$125          |
| Supervising Special Investigator I | Education Differential Pay | \$125          |

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|-----------------------------------|--|
| <b>SEVERITY:<br/>VERY SERIOUS</b> | <b>FINDING NO. 14 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS</b> |
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**Summary:** The CRU found two errors in the four pay differentials reviewed. This is the second consecutive time this has been a finding for the CalHHS.

| Classification                     | Area                       | Description of Finding(s)   | Criteria             |
|------------------------------------|----------------------------|---|----------------------|
| Supervising Special Investigator I | Education Differential Pay | Department failed to provide supporting documentation demonstrating the employee was eligible for the pay differential. | Pay Differential 244 |

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

| Classification                     | Area                       | Description of Finding(s)   | Criteria             |
|------------------------------------|----------------------------|---|----------------------|
| Supervising Special Investigator I | Education Differential Pay | The department inexplicably stopped issuing the pay differential to the employee in error starting in the June 2021 pay period, resulting in the employee being undercompensated. | Pay Differential 244 |

**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 CalHHS 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 CalHHS provides that its human resources did not have a clear retention policy for pay differentials; therefore, the required degrees were not retained for the first Supervising Special Investigator I identified in the table above. For the other Supervising Special Investigator I identified, the pay differential was removed in error; it has since been restored.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 244 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.

## 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>11</sup> worked and paid absences<sup>12</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.

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<sup>11</sup> For example, two hours or ten hours count as one day.

<sup>12</sup> For example, vacation, sick leave, compensating time off, etc.

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 CalHHS had eight positive paid employees whose hours were tracked. The CRU reviewed six of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification                      | Tenure            | Time Frame       | Time Worked  |
|-------------------------------------|-------------------|------------------|--------------|
| Attorney III                        | Retired Annuitant | 7/1/20 – 6/30/21 | 290 hours    |
| Investigator                        | Retired Annuitant | 7/1/20 – 6/30/21 | 949 hours    |
| Special Consultant                  | Retired Annuitant | 7/1/20 – 6/30/21 | 951 hours    |
| Supervising Special Investigator II | Retired Annuitant | 7/1/20 – 6/30/21 | 930 hours    |
| Supervising Special Investigator II | Retired Annuitant | 7/1/20 – 6/30/21 | 912.75 hours |
| Supervising Special Investigator II | Retired Annuitant | 7/1/20 – 6/30/21 | 835.5 hours  |

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|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 15 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 CalHHS 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, November 1, 2020, through October 31, 2021, the CalHHS authorized nine ATO transactions. The CRU reviewed eight of these ATO

transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

| Classification           | Time Frame         | Amount of Time on ATO |
|--------------------------|--------------------|-----------------------|
| AGPA                     | 10/21/21           | 0.5 hours             |
| AGPA                     | 8/24/21 – 8/27/21  | 32 hours              |
| Office Occupations Clerk | 12/2/20 – 12/31/20 | 84 hours              |
| Office Occupations Clerk | 1/4/21 – 1/29/21   | 76 hours              |
| Office Occupations Clerk | 2/1/21 – 3/1/21    | 80 hours              |
| Office Occupations Clerk | 3/2/21 – 3/30/21   | 84 hours              |
| Office Occupations Clerk | 4/1/21 – 4/30/21   | 88 hours              |
| SSA (General)            | 9/27/21            | 8 hours               |

|                              |   |
|------------------------------|---|
| <b>SEVERITY:<br/>SERIOUS</b> | <b>FINDING NO. 16 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED</b> |
|------------------------------|---|

**Summary:** The CalHHS did not grant ATO in conformity with the established policies and procedures. Of the eight ATO authorizations reviewed by the CRU, one was found to be out of compliance for failing to document justification for the ATO. In addition, the CalHHS did not obtain approval from CalHR prior to authorizing ATO in excess of 30 days for one employee.

**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:** In the first instance, the CalHHS states that the supervisor who approved the ATO was not aware that they were required to provide justification for the ATO beyond what was indicated on the timesheet. In the second instance, the CalHHS acknowledges that they did not obtain CalHR's approval for ATO in excess of 30 days. The CalHHS states that the concept and duties of the classification were not appropriate for telework; therefore, they believed ATO was the best option for the employee.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS 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, August 1, 2021, through October 31, 2021, the CalHHS reported five units comprised of 67 active employees for the August pay period, 70 active employees for the September pay period, and 71 active employees for the October pay period. 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 |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| August 2021            | 102           | 13                  | 13                            | 0                            |
| September 2021         | 103           | 6                   | 6                             | 0                            |
| October 2021           | 109           | 1                   | 1                             | 0                            |

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 17 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CalHHS kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous

service.<sup>13</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees<sup>14</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, February 1, 2021, through January 31, 2022, the CalHHS had six employees with qualifying and non-qualifying pay period transactions. The CRU reviewed five transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

| Type of Transaction       | Time base | Number Reviewed |
|---------------------------|-----------|-----------------|
| Non-Qualifying Pay Period | Full Time | 5               |

<sup>13</sup> Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

<sup>14</sup> As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

|               |  |
|---------------|--|
| IN COMPLIANCE | <b>FINDING NO. 18 SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
|---------------|--|

The CRU determined that the CalHHS ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

**Policy and Processes**

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (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.*)

|               |   |
|---------------|---|
| IN COMPLIANCE | <b>FINDING NO. 19 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
|---------------|---|

The CRU verified that the policy was disseminated to all staff and emphasized the CalHHS’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CalHHS’s 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.*)

|                      |   |
|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 20 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
|----------------------|---|

The CRU verified that the CalHHS, 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 CalHHS 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 seven permanent CalHHS employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

|                              |   |
|------------------------------|---|
| <b>SEVERITY:<br/>SERIOUS</b> | <b>FINDING NO. 21 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b> |
|------------------------------|---|

**Summary:** The CalHHS did not provide annual performance appraisals to five of seven employees reviewed after the completion of the employee’s

probationary period. This is the second consecutive time this has been a finding for the CalHHS.

**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 CalHHS states that despite their efforts to remind supervisors and managers of performance appraisal due dates, not all supervisors completed the performance appraisals.

**Corrective Action:** Within 90 days of the date of this report, the CalHHS 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 CalHHS's response is attached as Attachment 1.

### **SPB REPLY**

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



KIM JOHNSON  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
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Attachment 1



GAVIN NEWSOM  
GOVERNOR

July 1, 2022

Suzanne Ambrose  
Executive Director  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

SUBJECT: CalHHS AUDIT RESPONSE

Dear Ms. Ambrose:

This letter is in response pursuant to Government Code Section 18661, the State Personnel Board's (SPB) Compliance Review Unit (CRU) conducted a review of the California Health and Human Services Agency (CalHHS) personnel practices on (insert date of report) in the area of examinations, appointments, Equal Employment Opportunity, Personal Services Contracts, mandated training, compensation and pay, leave, and policy and processes. The CalHHS has reviewed the draft report and prepared responses to the findings.

**Finding No 3 – Promotion-in-Place was not properly documented**

**Cause:**

CalHHS did not conduct an internal recruitment for a promotion-in-place as there were no other employees eligible for appointment. While not included in the justification, the employee demonstrated a more than satisfactory job performance in their current classification and had shown the ability and willingness to succeed at the higher level classification. The hiring manager focused more on the business need for the upgrade and was not aware that the employee specific information was required in the justification.

**Remedy:**

Staff has been provided with an update as to the provisions of California Code of Regulations, title 2, section 242. The justification memorandum to promote-in-place the employee has been amended to include the employee's name and demonstrate compliance with CCR, title 2, section 4. The justification memorandum is attached.

Suzanne Ambrose  
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**Finding No 4 – Appointment documentation was not kept for the appropriate amount of time**

**Cause:**

CDSS is responsible for the retention of NOPAs for CalHHS and acknowledges the importance of retaining appointment documentation. The NOPAs were not retained due to established retention procedures not being followed.

**Remedy:**

The Personnel Specialist (PS) will email the NOPA to the employee's work email address with a read receipt and instructions to sign and return the NOPA within 10 days. Until the signed NOPA is received, the PS will send an unsigned copy of the employee's NOPA to be filed in the employee's Official Personnel File (OPF). Once the signed copy is received, the unsigned copy will be replaced with the signed copy. If the employee does not return a signed copy within 30 days, the PS will write the "Employee did not respond" on the unsigned NOPA to be retained in the OPF. CDSS will send staff a reminder of the NOPA retention procedure and ensure that new HR staff are trained accordingly.

**Finding No 5 – Department did not provide benefit information in accordance with Civil Service Law**

**Cause:**

CalHHS understands the importance of providing employees with an explanation of benefits prior to their appointment. CalHHS has incorporated this step into their hiring process.

**Remedy:**

CalHHS staff has been reminded of the importance of notifying candidates of their benefits prior to appointment. This function has been centralized in CalHHS's Administrative support unit

**Finding No 8 – Ethics training was not provided for all filers**

**Cause:**

CalHHS recognizes the importance of Ethics Training. Despite the various methods used to inform and remind supervisors of this requirement, not all employees completed the training timely.

Suzanne Ambrose  
Page Three

**Remedy:**

CalHHS will send reminder communications to employees who have not returned their certificate of completion with a “cc” to the employee’s immediate supervisor. CalHHS will continue to reiterate the importance of completing Ethics Training in a timely manner to all supervisors and managers. In addition, CalHHS will encourage supervisors to consider delinquent training as part of the evaluation criteria on employee evaluations.

**Finding No 9 – Sexual Harassment Prevention training was not provided for all employees**

**Cause:**

CalHHS agrees with the findings and has made this a priority. CalHHS has a process in place to notify employees regarding Sexual Harassment Prevention Training (SHPT).

**Remedy:**

CalHHS will improve the process by stressing the importance of completing SHPT in executive and monthly supervisor/manager meetings. In addition, along with monitoring, CalHHS will encourage supervisors to consider delinquent training as part of employee evaluations.

**Finding No 10 – Supervisory Training was not provided for all supervisors, managers, and CEAs**

**Cause:**

CalHHS recognizes the importance of supervisory training for all supervisors, managers, and CEAs. Despite the various methods used to inform and remind supervisors of this requirement, not all employees completed the training timely.

**Remedy:**

CalHHS will improve the process by emphasizing the importance of completing training in executive and monthly supervisor/manager meetings. In addition, along with monitoring, CalHHS will encourage supervisors to consider delinquent training as part of the employee evaluation.

**Finding No 14 – Incorrect authorization of pay differentials**

**Cause:**

CDSS is responsible for performing all functions related to pay for CalHHS. CDSS did not have a clear retention policy for pay differentials, therefore the required degrees were not retained. The Education Pay Differential was removed in error from a Supervising Special Investigator I; however, this has been corrected and the employee correctly compensated.

Suzanne Ambrose  
Page Four

**Remedy:**

CalHHS will maintain an electronic file for all documentation relating to pay differentials.

**Finding No 16 – Administrative Time Off was not properly documented**

**Cause:**

CalHHS acknowledges the severity of not maintaining proper documentation for the approval of this ATO. The supervisor who approved the .5 hours of ATO was not aware that they were required to provide justification for its authorization beyond what was indicated on the official timesheet.

CalHHS did not request CalHR's approval for ATO in excess of 30 days for one employee. The duties and concept of the classification do not lend themselves to the telework environment. CalHHS believed ATO was the most appropriate manner in which to proceed in this scenario.

**Remedy:**

CalHHS staff have been reminded that all requests for Administrative Time Off must have appropriate justification. Further, for those instances in which the ATO exceeds five working days, CalHR approval must be obtained.

**Finding No 21 – Performance Appraisals were not provided to all employees**

**Cause:**

CalHHS has been proactive in prompting managers and supervisors about due date of performance appraisals. Management Information Retrieval System (MIRS) reports are used to identify employees who are due for their probation evaluations and are sent monthly to every Attendance Coordinator. Not all supervisors have completed performance appraisals.

**Remedy:**

In addition to the emails and reminders, along with annual monitoring, the CalHHS leadership team will emphasize the importance of completing performance appraisals in executive and monthly supervisor/manager meetings.

CalHHS thanks SPB for the opportunity to respond to the draft Compliance Review Report. If you have any questions, please contact Ricardo DeLaCruz, CDSS Human Resources Branch Chief, at (916) 657-1766 or via email at [Ricardo.DeLaCruz@dss.ca.gov](mailto:Ricardo.DeLaCruz@dss.ca.gov).

SONIA HERRERA, Chief of Administration  
California Health and Human Services Agency