



COMPLIANCE REVIEW REPORT

OFFICE OF STATE PUBLIC DEFENDER

Compliance Review Unit
State Personnel Board
July 21, 2022

TABLE OF CONTENTS

| | |
|------------------------------------|----|
| INTRODUCTION | 1 |
| EXECUTIVE SUMMARY | 2 |
| BACKGROUND | 3 |
| SCOPE AND METHODOLOGY | 4 |
| FINDINGS AND RECOMMENDATIONS..... | 6 |
| EXAMINATIONS..... | 6 |
| APPOINTMENTS..... | 7 |
| EQUAL EMPLOYMENT OPPORTUNITY | 9 |
| PERSONAL SERVICES CONTRACTS | 10 |
| MANDATED TRAINING | 12 |
| COMPENSATION AND PAY | 15 |
| LEAVE..... | 21 |
| POLICY AND PROCESSES | 25 |
| DEPARTMENTAL RESPONSE..... | 27 |
| SPB REPLY | 27 |

INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

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

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

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

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

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

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

EXECUTIVE SUMMARY

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

| Area | Severity | Finding |
|------------------------------|---------------|---|
| Examinations | In Compliance | Examination Complied with Civil Service Laws and Board Rules |
| Appointments | Very Serious | Unlawful Appointment |
| 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 ¹ |
| Mandated Training | Very Serious | Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs ² |
| Mandated Training | Very Serious | Sexual Harassment Prevention Training Was Not Provided for All Employees ³ |
| Compensation and Pay | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |

¹ Repeat Finding. The September 26, 2019, OSPD Compliance Review Report identified 15 new filers were not provided ethics training within 6 months of their appointment.

² Repeat Finding. The September 26, 2019, OSPD Compliance Review Report identified 1 new supervisor was not provided basic supervisory training within 12 months of appointment.

³ Repeat Finding. The September 26, 2019, OSPD Compliance Review Report identified 3 new supervisors who were not provided sexual harassment prevention training within 6 months of appointment. In addition, the OSPD did not provide sexual harassment prevention training to 6 of 9 existing supervisors every 2 years.

| Area | Severity | Finding |
|----------------------|---------------|---|
| Compensation and Pay | In Compliance | Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Leave | In Compliance | Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | In Compliance | Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave | Very Serious | Incorrectly Posted Leave Usage and/or Leave Credit |
| 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 | In Compliance | Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines |

BACKGROUND

The OSPD is tasked with delivering constitutionally required post-conviction legal services to men and women on California's death row and improving indigent defense statewide by providing training and technical assistance to attorneys representing the indigent, and by engaging in other efforts to improve the overall quality of indigent defense.

The OSPD has two basic business functions: Legal - which includes the work of the legal management team responsible for policies and practices concerning the delivery of OSPD's mission to its clients; and Administrative - which includes personnel services, information technology, and business services.

The OSPD has offices in Sacramento and Oakland consisting of 93 budgeted positions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the OSPD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁴. The primary objective of the review was to determine if the OSPD'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 OSPD'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 OSPD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OSPD did not conduct any permanent withhold actions during the compliance review period.

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

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

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

⁴ 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 (DAC).

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

The OSPD'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 CEAs were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the OSPD'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 OSPD's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the OSPD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of OSPD 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 OSPD did not have any employees with non-qualifying pay period transactions.

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

The OSPD declined to have an exit conference. The CRU received and carefully reviewed the OSPD's written response on July 7, 2022, which is attached to this final compliance review report.

⁵If 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, 2021, through December 31, 2021, the OSPD conducted one examination. The CRU reviewed the examination, which is listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|------------------------------|-------------------|--|-----------------|-------------|
| Deputy State Public Defender | Departmental Open | Qualification Appraisal Panel ⁶ | 2/16/2021 | 30 |

| | |
|----------------------|---|
| IN COMPLIANCE | FINDING NO. 1 EXAMINATION COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES |
|----------------------|---|

The CRU reviewed the open examination which the OSPD administered in order to create an eligible list from which to make appointments. The OSPD published and distributed

⁶ The Qualification Appraisal Panel interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

the examination bulletin containing the required information for the examination. Applications received by the OSPD 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 OSPD 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, October 1, 2020, through September 30, 2021, the OSPD made 25 appointments. The CRU reviewed nine of those appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|--|--------------------|-----------|-----------|---------------|
| Career Executive Assignment (CEA) B, Deputy Director | CEA | Permanent | Full Time | 1 |
| Associated Governmental Program Analyst | Certification List | Permanent | Full Time | 1 |
| Deputy State Public Defender | Certification List | Permanent | Full Time | 1 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|----------------------------------|--------------------|-----------|-----------|---------------|
| Graduate Student Assistant | Certification List | Permanent | Full Time | 1 |
| Legal Analyst | Certification List | Permanent | Full Time | 1 |
| Research Data Analyst II | Certification List | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | 1 |
| Staff Services Manager I | Certification List | Permanent | Full Time | 1 |
| Senior Personnel Specialist | Transfer | Permanent | Full Time | 1 |

| | |
|-----------------------------------|---|
| SEVERITY: VERY SERIOUS | FINDING NO. 2 UNLAWFUL APPOINTMENT |
|-----------------------------------|---|

Summary: During its review, the CRD found the OSPD made one unlawful appointment utilizing the certification list for the Associate Governmental Program Analyst. The hired candidate did not meet the minimum qualifications for the classification; therefore, the OSPD subsequently corrected the unlawful appointment.

Criteria: Pursuant to Government Code section 18931, subdivision (a), the Board shall establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. In accordance with California Code of Regulations, title 2, section 249.4, appointing powers shall verify that the candidate satisfies the minimum qualifications of the classification before the candidate is appointed.

Severity: Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary

action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action.

Cause: The OSPD states that this error was due to the incorrect determination that the candidate's civil service and outside work experience met the minimum qualifications for the Associate Governmental Program Analyst classification.

Corrective Action: Within 90 days of the date of this report, the OSPD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate that the department will improve its hiring practices. 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).)

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

| | |
|---------------|--|
| IN COMPLIANCE | FINDING NO. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES |
|---------------|--|

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the OSPD’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 Executive Director of the OSPD. The OSPD 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, 2021, through December 31, 2021, the OSPD had 22 PSC’s that were in effect. The CRU reviewed 12 of those, which are listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|---------------------------|-------------------------------------|----------------|-----------------|---------------------------|---------------------|
| Compassionate Return, LLC | Communication and Consulting | 8/21-10/22 | \$165,850.00 | Yes | Yes |
| ENS, Inc. | IT Consulting | 7/17 - 6/23 | \$240,000.00 | Yes | Yes |
| GSL Data Solutions | Copying and Scanning | 4/19 - 4/22 | \$61,250.00 | Yes | Yes |
| Inabind Systems | Binding Machine Maintenance | 7/21 - 6/22 | \$450.00 | Yes | Yes |
| Kristin Traicoff | Capital Practice Manual Updates | 12/20-12/23 | \$8,400.00 | Yes | Yes |
| Magellan Health Services | EAP Fee for Services | 9/21 - 6/23 | \$100,000.00 | Yes | Yes |
| Michael Risher | CPR Legal Training | 10/21-10/24 | \$9,500.00 | Yes | Yes |
| Oren Jay Sofer | Meditation & Communication Training | 2/21 - 12/21 | \$9,999.00 | Yes | Yes |
| Pitney Bowes | Postage Meter Rental & Maintenance | 7/21 - 6/22 | \$835.00 | Yes | Yes |
| RELX, Inc. | Electronic Library Database | 1/18 - 12/22 | \$2,196.00 | Yes | Yes |
| Saddle Point Systems | Binding Machine Maintenance | 7/21 - 6/22 | \$1,090.00 | Yes | Yes |
| The Kolbe Company | Strategic Planning and Consulting | 4/21 - 4/24 | \$99,879.50 | Yes | Yes |

| | |
|----------------------|--|
| IN COMPLIANCE | FINDING NO. 4 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS |
|----------------------|--|

The total dollar amount of all the PSC's reviewed was \$699,499.50. It was beyond the scope of the review to make conclusions as to whether OSPD justifications for the contract were legally sufficient. For all PSC's reviewed, the OSPD 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 OSPD complied with proper notification to all organizations that represent state employees who perform the type of work contracted. Accordingly, the OSPD 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 Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a 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 OSPD’s mandated training program that was in effect during the compliance review period, January 1, 2020, through December 31, 2021.

| | |
|-----------------------------------|--|
| SEVERITY: VERY SERIOUS | FINDING No. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS |
|-----------------------------------|--|

Summary: The OSPD did not provide ethics training to 2 of 49 existing filers. This is the second consecutive time this has been a finding for the OSPD.

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: No specific cause provided by the OSPD.

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

| | |
|-----------------------------------|--|
| SEVERITY: VERY SERIOUS | FINDING No. 6 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS |
|-----------------------------------|--|

Summary: The OSPD did not provide manager training to 1 new manager within 12 months of appointment and did not provide CEA training to 1 new CEA within 12 months of appointment. This is the second consecutive time this has been a finding for the OSPD.

- 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 OSPD states that this finding was due to a registration error. The employee completed the California Leadership Academy Supervisor Development Program instead of the California Leadership Academy Executive Development Program, which was not available at the time.
- SPB Reply:** No *initial* leadership training certificate was provided by the OSPD for the employee noted in this finding. Biennial leadership training certificates were provided.
- Corrective Action:** Within 90 days of the date of this report, the OSPD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors are provided supervisory training within twelve months of appointment 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.

| | |
|-----------------------------------|---|
| SEVERITY: VERY SERIOUS | FINDING NO. 7 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES |
|-----------------------------------|---|

Summary: The OSPD did not provide sexual harassment prevention training to 2 of 14 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the OSPD.

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: No specific cause provided by the OSPD.

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

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments

calculate and determine an employee’s salary rate⁷ 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, October 1, 2020, through September 30, 2021, the OSPD made 25 appointments. The CRU reviewed nine of those appointments to determine if the OSPD applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|--|--------------------|-----------|-----------|-----------------------|
| Deputy Director | CEA | Permanent | Full Time | \$14,798.00 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | \$5,383.00 |
| Deputy State Public Defender | Certification List | Permanent | Full Time | \$12,140.00 |
| Graduate Student Assistant | Certification List | Permanent | Full Time | \$3,422.00 |
| Legal Analyst | Certification List | Permanent | Full Time | \$4,496.00 |
| Research Data Analyst II | Certification List | Permanent | Full Time | \$5,717.00 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,476.00 |
| Staff Services Manager I | Certification List | Permanent | Full Time | \$6,124.00 |
| Senior Personnel Specialist | Transfer | Permanent | Full Time | \$5,770.00 |

| | |
|----------------------|---|
| IN COMPLIANCE | FINDING NO. 8 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
|----------------------|---|

The CRU found no deficiencies in the salary determinations that were reviewed. The OSPD appropriately calculated and keyed the salaries for each appointment and correctly

⁷ “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).

determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, October 1, 2020, through September 30, 2021, the OSPD employees made two alternate range movements within a classification. The CRU reviewed all of the alternate range movements to determine if the OSPD applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

| Classification | Prior Range | Current Range | Time Base | Salary (Monthly Rate) |
|-----------------------|-------------|---------------|--------------|-----------------------|
| Deputy State Defender | B | C | Full Time | \$9,503.00 |
| Student Assistant | C | D | Intermittent | \$3,184.00 |

| | |
|----------------------|---|
| IN COMPLIANCE | FINDING NO. 9 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
|----------------------|---|

The CRU determined that the alternate range movements the OSPD 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.⁸ (Gov. Code, § 19836, subd. (b).)

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

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

⁸ 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.

comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, October 1, 2020, through September 30, 2021, the OSPD authorized eight HAM requests. The CRU reviewed all eight of the authorized HAM requests to determine if the OSPD 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) |
|------------------------------|--------------------|-----------|---------------------------|-----------------------|
| Deputy Director | CEA | Permanent | \$13,421.00 - \$14,798.00 | \$14,798.00 |
| Deputy State Public Defender | Certification List | Permanent | \$6,946.00 - \$12,140.00 | \$12,140.00 |
| Deputy State Public Defender | Certification List | Permanent | \$6,946.00 - \$12,140.00 | \$10,802.00 |
| Deputy State Public Defender | Certification List | Permanent | \$6,946.00 - \$12,140.00 | \$12,140.00 |
| Deputy State Public Defender | Certification List | Permanent | \$6,946.00 - \$12,140.00 | \$8,381.00 |
| Deputy State Public Defender | Certification List | Permanent | \$6,946.00 - \$12,140.00 | \$9463.00 |
| Deputy State Public Defender | Certification List | Permanent | \$7,323.00 - \$12,798.00 | \$10,802.00 |
| Staff Services Manager I | Certification List | Permanent | \$6,124.00 - \$7,608.00 | \$7,100.00 |

| | |
|----------------------|--|
| IN COMPLIANCE | FINDING NO. 10 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
|----------------------|--|

The CRU found that the HAM requests the OSPD 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, October 1, 2020, through September 30, 2021, the OSPD authorized two pay differentials.⁹ The CRU reviewed both pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Pay Differential | Monthly Amount |
|----------------------------------|------------------|----------------|
| Information Technology Associate | 13 | \$305.65 |
| Legal Secretary | 141 | \$501.02 |

| | | |
|----------------------|-----------------------|---|
| IN COMPLIANCE | FINDING NO. 11 | PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
|----------------------|-----------------------|---|

The CRU found no deficiencies in the pay differentials that the OSPD authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

⁹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

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 days¹⁰ worked and paid absences¹¹, 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.

¹⁰ For example, two hours or ten hours count as one day.

¹¹ 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 OSPD had two positive paid employees whose hours were tracked. The CRU reviewed both of the positive paid appointments to ensure compliance with applicable laws, regulations, policies, and guidelines, which are listed below:

| Classification | Tenure | Time Frame | Time Worked |
|--|-------------------|--------------|-------------|
| Staff Services Manager I | Retired Annuitant | Intermittent | 1200 |
| Supervising Deputy State Public Defender | Retired Annuitant | Intermittent | 407 |

| | |
|----------------------|--|
| IN COMPLIANCE | FINDING NO. 12 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|--|

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The OSPD 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, October 1, 2020, through September 30, 2021, the OSPD authorized four ATO transactions. The CRU reviewed all four of the 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 |
|--|--------------------|-----------------------|
| Associate Personnel Analyst | July 2021 | 1.5 hours |
| Information Technology Supervisor II | July 2021 | 24 hours |
| Senior Personnel Specialist | July – August 2021 | 4 hours |
| Supervising Deputy State Public Defender | August 2021 | 56 hours |

| | | |
|----------------------|-----------------------|---|
| IN COMPLIANCE | FINDING NO. 13 | ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|-----------------------|---|

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The OSPD provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations, and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

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, 2021, through September 30, 2021, the OSPD reported 4 units comprised of 75 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 2021 | 013 | 17 | 17 | 0 |
| August 2021 | 015 | 44 | 44 | 0 |
| September 2021 | 015 | 47 | 47 | 0 |

| | |
|-----------------------------------|--|
| SEVERITY: VERY SERIOUS | FINDING NO. 14 INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT |
|-----------------------------------|--|

Summary: The OSPD did not correctly enter 2 of 44 timesheets into the Leave Accounting System during the August 2021 pay period. As a result, two employees retained their prior leave balance despite having used leave credits.

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 OSPD states that the cause was errors by the personnel staff.

Corrective Action: Within 90 days of the date of this report, the OSPD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 2101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

| | |
|---------------|---|
| IN COMPLIANCE | FINDING NO. 15 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|---------------|---|

The CRU verified that the policy was disseminated to all staff and emphasized the OSPD's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the OSPD'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 office to discuss the status of volunteers. (*Ibid.*)

| | |
|----------------------|---|
| IN COMPLIANCE | FINDING NO. 16 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|---|

The CRU verified that the OSPD 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 OSPD 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 14 permanent OSPD employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies, and guidelines.

| | |
|----------------------|---|
| IN COMPLIANCE | FINDING NO. 17 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
|----------------------|---|

The CRU found no deficiencies in the 14 performance appraisals selected for review. Accordingly, the OSPD performance appraisal policy and processes satisfied civil service laws, Board rules, policies, and guidelines.

DEPARTMENTAL RESPONSE

The OSPD's response is attached as Attachment 1.

SPB REPLY

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

Office of the State Public Defender

770 L St., Suite 1000
Sacramento, California 95814-3362
Telephone: (916) 322-2676
Fax: (916) 327-0459



July 7, 2022

Alton Ford
Compliance Review Manager
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Mr. Alton Ford,

The SPB's Compliance Review Unit (CRU) conducted a routine compliance review of the OSPD personnel practices in the areas of examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSCs), mandated training, compensation and pay, leave, and policy and processes. The primary objective of the review was to determine if OSPD personnel practices, policies and procedures complied with state civil service laws and board regulations and to recommend corrective action where deficiencies were identified. The CRU identified five areas of deficiency.

FINDING NO. 2 – Unlawful Appointment

Cause: The OSPD acknowledges this finding and understands the importance of this unlawful appointment. This error was due to the incorrect determination that the candidate's Civil Service and outside experience met the minimum qualifications for the Associate Governmental Program Analyst (AGPA). However, the total experience did not meet the AGPA's 36 months of professional analytical experience.

FINDING NO. 5 – Ethics Training Was Not Provided for All Filers

Cause: The OSPD acknowledges this finding and understands the importance of insuring that all filers complete the Ethics Training within six months of hire and every two years thereafter. This error was due to not having all employees in compliance with the training requirement. Albeit late, the two filers completed the training. The training coordinator has received additional training on the importance of insuring the training is completed within the given timeframes.

FINDING NO. 6 – Supervisory Training Was Not Provided for All Supervisors

Cause: The OSPD acknowledges this finding and understands the importance of training all supervisors and managers. This was due to a registration error. The employee completed the California Leadership Academy Supervisor Development Program (4 months after hired) instead of the California Leadership Academy Executive Development Program which was not available. Albeit late, the employee recently completed the California Leadership Academy Executive Development Program.

FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: OSPD acknowledges this finding and understands the importance of insuring that all supervisors are provided sexual harassment prevention training every two years and within six months of appointment. This error was due to not having all employees in compliance with the training requirement. The training was not completed by the two filers within the required time frame. Albeit late, the two filers completed the training. The training coordinator has received additional training on the importance of insuring the training is completed within the given timeframes.

FINDING NO. 14 – Incorrectly Posted Leave Usage and/or Leave Credit

Cause: The OSPD acknowledges this finding and understands the importance of maintaining employee leave balances. This error was made and was corrected by personnel staff. The personnel staff has received additional training on the importance of verifying the information prior to keying in LAS for accuracy.

The OSPD appreciates the work of the CRU as well as their professionalism and technical assistance during the review. Additionally, OSPD takes the reported deficiencies very seriously and has implemented corrective action to strengthen oversight and compliance in the sited areas as indicated in our responses above. If you have any questions or concerns, please contact Nathan Nguyen, Human Resources Manager at (916) 322-5795 or Nathan.Nguyen@ospd.ca.gov.

Sincerely,

Charlene Bennett
Chief of Administration