

# **COMPLIANCE REVIEW REPORT**

## **PUBLIC EMPLOYMENT RELATIONS BOARD**

Compliance Review Unit  
State Personnel Board  
April 10, 2025

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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 Division (CRD) 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 CRD 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 CRD conducted a routine compliance review of the Public Employment Relations Board (PERB) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Appointments	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Mandated Training	In Compliance	Mandated Training Complied with Statutory Requirements
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Pay Differentials
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Area	Severity	Finding
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

### **BACKGROUND**

It is the mission of the PERB to administer and enforce California public sector collective bargaining laws in an expert, fair, and consistent manner; to thereby promote improved public sector employer-employee relations; and to provide a timely and cost-effective method through which employers, employee organizations, and employees can resolve their labor relations disputes.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing PERB's examinations, appointments, EEO program, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The primary objective of the review was to determine if the PERB'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.

The CRD examined the documentation that the PERB provided, which included examination plans, examination bulletins, job analyses, and scoring results.

The PERB did not conduct any permanent withhold actions during the compliance review period.

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<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

A cross-section of the PERB's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRD examined the documentation that the PERB provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The PERB did not conduct any unlawful appointment investigations during the compliance review period.

The PERB's appointments were also selected for review to ensure the PERB applied salary regulations accurately and correctly processed employees' compensation and pay. The CRD examined the documentation that the PERB 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 CRD reviewed specific documentation for the following personnel functions related to compensation and pay: monthly pay differentials, and out-of-class assignments. During the compliance review period, the PERB did not issue or authorize red circle rate requests, arduous pay, bilingual pay, or alternate range movements.

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

The PERB did not execute any PSC's during the compliance review period.

The PERB'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 those serving in Career Executive Assignments (CEA) were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRD reviewed the PERB'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 CRD selected a small cross-section of the PERB's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRD reviewed a selection of PERB 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 PERB did not have any employees with non-qualifying pay period transactions or authorized Administrative Time Off during the compliance review period.

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

The CRD received and carefully reviewed the PERB's written response on March 28, 2025, 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, November 1, 2023, through October 31, 2024, the PERB conducted one examination. The CRD reviewed the examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Conciliator, Department of Industrial Relations (DIR) <sup>2</sup>	Open	Training and Experience <sup>3</sup>	6/5/24	6

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

<sup>2</sup> Government Code section 3600 transferred the functions of the State Mediation and Conciliation Service from the Department of Industrial Relations to the PERB. Although the classification title has not been updated, the Conciliator classification is appropriately allocated to the PERB.

<sup>3</sup> The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.



does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, October 1, 2023, through September 30, 2024, the PERB made 28 appointments. The CRD reviewed 11 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Conciliator, DIR	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Limited Term	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Senior Administrative Law Judge	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	2
Attorney III	Permissive Reinstatement	Permanent	Full Time	1

<b>IN COMPLIANCE</b>	<b>FINDING No. 2 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The PERB measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 10 list appointments reviewed, the PERB ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRD reviewed one PERB appointment made via permissive reinstatement. A permissive reinstatement of an employee from a position under one appointing power to a position under another appointing power may be made if the reinstatement is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.)

The CRD found no deficiencies in the appointments that the PERB initiated during the compliance review period. Accordingly, the CRD found that the PERB's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

### **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).)

<b>IN COMPLIANCE</b>	<b>FINDING NO. 3</b>	<b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the PERB'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 PERB. The PERB 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.

### **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.*)

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 CRD reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRD reviewed the PERB's mandated training program that was in effect during the compliance review period, November 1, 2022, through October 31, 2024.

<b>IN COMPLIANCE</b>	<b>FINDING No. 4</b>	<b>MANDATED TRAINING COMPLIED WITH STATUTORY REQUIREMENTS</b>
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The PERB provided ethics training to its 6 new filers within 6 months of appointment and its 46 existing filers "at least once during each consecutive period of 2 calendar years, commencing on the first odd-numbered year thereafter." The PERB also provided supervisory training to its 1 new supervisor within 12 months of appointment. In addition, the PERB provided sexual harassment prevention training to its eight existing supervisors every two years. Furthermore, the PERB provided sexual harassment prevention training to 41 of 41 existing non-supervisors every 2 years. Thus, the PERB complied with mandated training requirements within statutory timelines.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>4</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.

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<sup>4</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).

During the period under review, October 1, 2023, through September 30, 2024, the PERB made 28 appointments. The CRD reviewed five of those appointments to determine if the PERB applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,855
Attorney	Certification List	Permanent	Full Time	\$8,708
Information Technology Associate	Certification List	Limited Term	Full Time	\$5,930
Information Technology Associate	Certification List	Permanent	Full Time	\$6,908
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,868

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRD found no deficiencies in the salary determinations that were reviewed. The PERB appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

### 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, 2023, through September 30, 2024, the PERB authorized nine pay differentials.<sup>5</sup> The CRD reviewed eight of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Administrative Law Judge (3 Positions)	84	5%
CEA	84	5%
Senior Administrative Law Judge (3 Positions)	84	5%
Supervising Administrative Law Judge	84	5%

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6    INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS</b>
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**Summary:**                      The CRD found one error in the eight pay differentials reviewed:

Classification	Area	Description of Finding	Criteria
CEA	National Judicial College Differential Pay	The employee's classification is not eligible to receive the pay differential, which resulted in overcompensation.	Pay Differential 84

**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.)

<sup>5</sup> For the purposes of CRD's review, only monthly pay differentials were selected for review at this time.

- Severity:** Very Serious. The PERB 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 PERB acknowledges the lack of documentation for authorized pay differential 84. However, the PERB maintains that while the pay differential may or may not have been proper based on the circumstance when the Chief Administrative Law Judge was appointed in 2011, the total pay was within the discretion of the PERB.
- SPB Response:** The PERB has the delegated authority to administer their CEA pay program within the salary cap established by CalHR; however, the employee was not eligible to receive the pay differential based on the criteria set forth in pay differential 84. Specifically, pay differential 84 is not authorized for CEAs.
- Corrective Action:** Within 90 days of the date of this report, the PERB must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 84 and ensure that employees are compensated correctly and that transactions are keyed accurately. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Out-of-Class Assignments and Pay

For excluded<sup>6</sup> and most rank-and-file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the

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<sup>6</sup> "Excluded employee" means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, October 1, 2023, through September 30, 2024, the PERB issued OOC pay to one employee. The CRD reviewed the OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines, which is listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Attorney III	R02	Legal Advisor, PERB	3/21/24-6/12/24

<b>IN COMPLIANCE</b>	<b>FINDING No. 7</b>	<b>OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRD found no deficiencies in the OOC pay assignment that the PERB authorized during the compliance review period. OOC pay was issued appropriately to the employee performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

## **Leave**

### **Positive Paid Employees**

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



time is used 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 the working days of a month. When counting 189 days, every day worked, including partial days<sup>7</sup> worked and paid absences<sup>8</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are 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).)

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 PERB had one positive paid employee whose hours were tracked. The CRD reviewed the positive paid appointment to ensure compliance with applicable laws, regulations, policies and guidelines, which is listed below:

Classification	Tenure	Time Frame	Time Worked
Staff Services Manager I	Retired Annuitant	7/1/23-6/30/24	545 Hours

<sup>7</sup> For example, two hours or ten hours count as one day.

<sup>8</sup> For example, vacation, sick leave, compensating time off, etc.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRD found no deficiencies in the positive paid employee reviewed during the compliance review period. The PERB provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

### Leave Accounting

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, May 1, 2024, through July 30, 2024, the PERB reported 15 units. The CRD reviewed 11 units within 3 pay periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 LEAVE ACCOUNTING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU reviewed leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRD found no deficiencies. The PERB utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system; (2) a definition of "nepotism" as an employee's use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10</b>	<b>NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRD verified that the policy was disseminated to all staff and emphasized the PERB's commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the PERB'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.*) In this case, the PERB did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 11</b>	<b>WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRD verified that the PERB provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRD verified that when the PERB 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 CRD selected four permanent PERB employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 12    PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRD found no deficiencies in the performance appraisals selected for review. Accordingly, the PERB performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

### **DEPARTMENTAL RESPONSE**

The PERB response is attached as Attachment 1.

### **SPB REPLY**

Based upon the PERB's written response, the PERB 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 CRD.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

1031 18th Street  
Sacramento, CA 95811-4124  
Telephone: 916-322-3198



TO: STATE PERSONNEL BOARD  
FROM: SUSAN DAVEY, EXECUTIVE DIRECTOR  
SUBJECT: PERB RESPONSE TO COMPLIANCE REVIEW REPORT  
DATE: MARCH 28, 2025

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The Public Employment Relations Board (PERB) would like to thank the Compliance Review Division for its thorough review of PERB's personnel practices in the areas of examinations, appointments, Equal Employment Opportunity (EEO), Personal Services Contracts, mandated training, compensation and pay, leave, and policy and processes. PERB appreciates the opportunity to better ensure our compliance and looks forward to remedying the findings identified in the report. The PERB has reviewed the report and prepared the following responses to the findings.

**Finding No. 6 – Incorrect Authorization Of Pay Differentials**

PERB acknowledges the lack of documentation for Pay Differential 84. However, we maintain that while the pay differential may or may not have been proper based on the circumstance when the Chief Administrative Law Judge was appointed in 2011, the total pay was within the discretion of PERB. This employee was at the mid-step of the Career Executive Assignment, Restricted Zone on the pay scale and had not received a 5% increase in 2023. Therefore, PERB was within our discretion for the total pay and there is no harm in this error.

If you have any questions, please do not hesitate to reach out via email at [Susan.Davey@perb.ca.gov](mailto:Susan.Davey@perb.ca.gov).

Sincerely,

Susan Davey

Digitally signed by Susan  
Davey  
Date: 2025.04.10  
16:21:22 -07'00'

Susan Davey  
Executive Director