

# **COMPLIANCE REVIEW REPORT**

## **EMPLOYMENT DEVELOPMENT DEPARTMENT**

Compliance Review Unit  
State Personnel Board  
December 22, 2016

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## **INTRODUCTION**

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

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's 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. 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.

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of Employment Development Department (EDD) personnel practices in the areas of examinations, appointments, and EEO from January 1, 2016, through June 30, 2016, and mandated training from June 30, 2014, through June 30, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
Mandated Training	Mandated Training Complied With Statutory Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

## **BACKGROUND**

The EDD enhances California's economic growth and prosperity by collaboratively delivering valuable and innovative services to meet the evolving needs of employers, workers, and job seekers. The EDD connects employers with job seekers, administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal Workforce Investment Act of 1998. Additionally, the EDD collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's work force.

The EDD is a member of the Labor and Workforce Development Agency of the executive branch of the State of California. As one of the largest departments in state government, the EDD has nearly 9,000 employees providing services at hundreds of service locations throughout California.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing EDD examinations, appointments, and EEO program from January 1, 2016, through June 30, 2016, and mandated training from June 30, 2014, through June 30, 2016. The primary objective of the review was to determine if EDD personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of EDD examinations and appointments were selected to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the EDD provided, which included examination bulletins, scoring results, notice of personnel action forms,

vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

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

The EDD had no PSC's that were subject to the Department of General Services (DGS) approval and thus our procedural review.<sup>1</sup>

In addition, the EDD's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory and sexual harassment prevention training within statutory timelines.

On December 8, 2016, an exit conference was held with the EDD to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the EDD written response on December 19, 2016, 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.) 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

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<sup>1</sup> If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

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 in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, 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, the EDD conducted 15 examinations. The CRU reviewed eight of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Tax Auditor, EDD	Departmental Promotional	Training and Experience (T&E) <sup>2</sup>	5/10/2016	27
CEA B, WSB, Los Angeles Ventura	Career Executive Assignment (CEA)	Statement of Qualifications (SOQ) <sup>3</sup>	2/19/2016	12
CEA B, WSB, Southern Workforce Services	CEA	SOQ	2/19/2016	12
CEA C, Disability Insurance Branch	CEA	SOQ	2/9/2016	9
Disability Insurance Program Manager III	Departmental Promotional	T&E	5/13/2016	33
Employment Development Administrator	Departmental Promotional	T&E	6/9/2016	37
Senior Tax Compliance Representative (Specialist)	Departmental Promotional	T&E	3/7/2016	54
Tax Administrator II, EDD	Departmental Promotional	T&E	5/2/2016	23

<sup>2</sup> The training and experience (T&E) 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, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

<sup>3</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

## **FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules**

The CRU reviewed eight departmental promotional examinations and three CEA examinations which the EDD administered in order to create eligible lists from which to make appointments. The EDD published and distributed examination bulletins containing the required information for all examinations. Applications received by the EDD were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The EDD notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications were also 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. Competitors were then notified of their final scores.

For the three CEA examinations, the EDD published and distributed examination bulletins containing required information. Applications and SOQ's were received by the EDD and were thereafter properly assessed to determine applicant ranks from one to six.

The CRU found no deficiencies in the examinations that the EDD conducted during the compliance review period. Accordingly, the EDD fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

### **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.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the EDD made 1,360 appointments. The CRU reviewed 95 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accounting Technician	Certification List	Permanent	Full Time	10
Disability Insurance Program Manager II	Certification List	Permanent	Full Time	1
Employment Development Administrator	Certification List	Permanent	Full Time	2
Employment Program Manager II	Certification List	Permanent	Full Time	1
Executive Secretary II	Certification List	Permanent	Full Time	1
Labor Relations Specialist	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Certification List	Permanent	Full Time	6
Office Services Supervisor III (General)	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	8
Program Technician	Certification List	Permanent	Full Time	8
Program Technician III	Certification List	Permanent	Full Time	1
Research Analyst II (General)	Certification List	Permanent	Full Time	1
Research Manager III (General)	Certification List	Permanent	Full Time	1
Research Program Specialist I	Certification List	Permanent	Full Time	1
Senior Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	2
Staff Services Analyst (General)	Certification List	Permanent	Full Time	2
Staff Services Manager III	Certification List	Permanent	Full Time	2
Staff Tax Auditor, Employment Development Department	Certification List	Permanent	Full Time	3



Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Systems Software Specialist III (Supervisory)	Certification List	Permanent	Full Time	1
Tax Administrator II, Employment Development Department	Certification List	Permanent	Full Time	2
Tax Compliance Representative	Certification List	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	Mandatory Reinstatement	Permanent	Full Time	2
Computer Operator	Mandatory Reinstatement	Permanent	Full Time	1
Employment Development Specialist II	Mandatory Reinstatement	Permanent	Full Time	2
Employment Program Manager II	Mandatory Reinstatement	Permanent	Full Time	1
Employment Program Representative	Mandatory Reinstatement	Permanent	Full Time	1
Employment Program Representative	Mandatory Reinstatement	Permanent	Full Time	6
Investigator	Mandatory Reinstatement	Permanent	Full Time	1
Office Technician (General)	Mandatory Reinstatement	Permanent	Full Time	1
Personnel Technician I	Mandatory Reinstatement	Permanent	Full Time	1
Program Technician III	Mandatory Reinstatement	Permanent	Full Time	2
Senior Accounting Officer (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Staff Programmer Analyst (Specialist)	Mandatory Reinstatement	Permanent	Full Time	1
Staff Services Manager I	Mandatory Reinstatement	Permanent	Full Time	1
Tax Compliance Representative	Mandatory Reinstatement	Permanent	Full Time	1
Associate Tax Auditor	Permissive Reinstatement	Permanent	Full Time	1
Disability Insurance Program Representative	Permissive Reinstatement	Permanent	Full Time	1
Employment Development Specialist I	Permissive Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Program Technician II	Permissive Reinstatement	Permanent	Full Time	1
Program Technician III	Permissive Reinstatement	Permanent	Full Time	1
Staff Services Analyst	Permissive Reinstatement	Permanent	Full Time	1
Senior Information Systems Analyst (Specialist)	Retired Annuitant	Limited Term	Intermittent	1
Seasonal Clerk	Temporary Authorization Utilization	Temporary	Intermittent	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	2
Limited Examination And Appointment Program Candidate	Transfer	Temporary	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	2
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Tax Auditor, Employment Development Department	Transfer	Permanent	Full Time	2
Warehouse Worker	Transfer	Permanent	Full Time	1

For each of the 56 certification list appointments, the EDD properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The EDD made 22 appointments via mandatory reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*) The EDD complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed one retired annuitant appointment. The retired annuitant submitted their application and was eligible for appointment as a retired annuitant, not to exceed 960 hours in a fiscal year.

The CRU reviewed one TAU appointment. When there is no employment list from which a position maybe filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The EDD complied with the rules and laws governing TAU appointments.

The CRU reviewed nine EDD appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer 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 Reg., tit. 2, § 425.) The EDD verified the eligibility of each candidate to their appointed class.

The CRU reviewed six appointments made via permissive reinstatement. An appointing power may reinstate permissively any person having probationary or permanent status who was separated from his or her position by resignation, by service retirement, by termination from limited-term, temporary, career executive assignment, or exempt appointment, by absence without leave under the terms of section 19996.2, or without a break in continuity of state service to accept another civil service or exempt appointment. (Gov. Code, §19140.) The EDD verified the eligibility of each candidate to their appointed class.

However, the EDD did not separate EEO questionnaires from the STD 678 employment applications for all appointments as described in finding two.

## **FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

### **Summary:**

Out of 95 appointments reviewed, five appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 11 of the 1,836 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

- Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."
- Severity:** Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.
- Cause:** The EDD states that the error was due to department size, scope, and decentralization of hiring.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the EDD submit to the CRU a written corrective action plan that the department will implement to ensure that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

### **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; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*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.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

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).)

The CRU reviewed the EDD EEO program that was in effect during the compliance review period.

**FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations**

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 EDD 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 Director of the EDD. In addition, the EDD has an established DAC that reports to the Director on issues affecting persons with a disability. The EDD also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the EDD EEO program 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 California Department of Human Resources (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), (b), & (c), & 19995.4, subd. (b).) 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).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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 biannual basis. (*Ibid.*)

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 EDD's mandated training program that was in effect during the compliance review period.

**FINDING NO. 4 – Mandated Training Complied with Statutory Requirements**

The EDD provided ethics training to its 356 new filers within six months of appointment and semiannual ethics training to its 644 existing filers during two-year calendar year period commencing in 2014. The EDD also provided supervisory training to its 132 new supervisors within 12 months of appointment. In addition, the EDD provided sexual harassment prevention training to its 308 new supervisors within six months of appointment, and sexual harassment prevention training to its 704 existing supervisors every two years. Thus, the EDD complied with mandated training requirements within statutory timelines.

**DEPARTMENTAL RESPONSE**

The EDD's response is attached as Attachment 1.

**SPB REPLY**

Based upon the EDD's written response, the EDD will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the EDD comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.



## M E M O R A N D U M

To: State Personnel Board  
Policy and Compliance Review Division

Date: December 14, 2016

From: Jill O'Connell  
Employment Development Department

Subject: DEPARTMENT RESPONSE TO THE EMPLOYMENT DEVELOPMENT  
DEPARTMENT (EDD) AUDIT

The EDD would like to thank the State Personnel Board's (SPB) Compliance Review Unit for their professionalism and dedication. The EDD takes compliance issues very seriously and has already taken multiple steps to address the finding that was reported. The department strives to ensure compliance with all civil service laws and works hard to ensure the integrity with the State's merit based recruitment and selection process is maintained. The EDD has taken into account the finding identified by the SPB Compliance Review and subsequent action will be determined and documented in a corrective action plan (within 60 days from the date the findings are published).

Response to Audit Finding:

Less than one percent of all the applications reviewed contained sensitive EEO data and although the EDD strives for a 100% success rate, due to size, scope, and decentralization of hiring at the EDD it is very difficult to achieve. The department has approximately 8000 employees, spread across over 100 locations throughout the state, with more than 1100 hiring managers involved in hiring decisions and the hiring process.

We will continue to train, educate, and remind our managers on the importance of removing the EEO questionnaires from the application packets but we truly believe there should be a statewide solution that addresses this problem. We are hopeful that the ECOS solution will fully address this problem, but in the interim, we believe that this problem could be addressed by removing the EEO questionnaire from Job applications altogether.

/s/JILL O'CONNELL, Chief  
Human Resource Services Division

cc: Melissa Shelton      Holly Ramsey  
    Parm Dhoot          Nanci Loftin