



COMPLIANCE REVIEW REPORT

CIVIL RIGHTS DEPARTMENT

Compliance Review Unit
State Personnel Board
October 19, 2023

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INTRODUCTION

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

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

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

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

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

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

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well

as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Civil Rights Department¹ (CRD) 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	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time ²
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts ³
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Employees
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Alternate Range Movement Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Formerly the Department of Fair Employment and Housing (DFEH).

² Repeat finding. The January 23, 2020, DFEH compliance review report identified that out of the 15 appointments reviewed, the DFEH failed to retain two NOPAs, two job announcements, and two sets of interview questions. Additionally, two of the 15 appointment files reviewed were missing all of the appointment and recruitment documentation including the hired applicant's application. Furthermore, the December 5, 2014, DFEH compliance review report identified that out of the 84 appointments reviewed, the DFEH failed to retain one certification list and two Notice of Personnel Action forms.

³ Repeat finding. The January 23, 2020, DFEH compliance review report identified that the DFEH did not notify unions prior to entering into 8 of the 8 PSC's reviewed.

Area	Severity	Finding
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Pay Differentials
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Administrative Time Off Was Not Properly Documented
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees ⁴

BACKGROUND

The CRD is the institutional centerpiece of California's broad commitment to civil rights. Born out of a decades-long struggle against discrimination, the CRD has been at the forefront of protecting the rights of Californians since its inception. In July 2022, the DFEH's name was changed to the CRD to more accurately reflect the department's powers and duties. The CRD is the largest state civil rights agency in the country.

⁴ Repeat finding. The January 23, 2020, DFEH compliance review report identified that the DFEH did not provide performance appraisals to 16 of 28 employees reviewed at least once in each twelve calendar months after the completion of the employee's probationary period.

The mission of the CRD is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations (businesses); also from hate violence and human trafficking in accordance with the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act. The employment antidiscrimination provisions of the FEHA apply to public and private employers, labor organizations, and employment agencies.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CRD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the CRD'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 CRD's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CRD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRD did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CRD's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CRD 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 CRD did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CRD did not make any additional appointments during the compliance review period.

The CRD's appointments were also selected for review to ensure the CRD applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CRD 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

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

documentation for the following personnel functions related to compensation and pay e.g., hire above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the CRD did not issue red-circle rate requests or arduous pay.

The review of the CRD'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.

The CRD's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the CRD's justifications for the contracts were legally sufficient. The review was limited to whether the CRD's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CRD'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 CRU reviewed the CRD'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 CRD's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CRD's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CRD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CRD positive paid employees

⁶If 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.

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 CRD did not have any employees with non-qualifying pay period transactions.

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

On September 19, 2023, an exit conference was held with the CRD to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CRD's written response on October 3, 2023, 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, December 1, 2021, through August 31, 2022, the CRD conducted six examinations. The CRU reviewed five of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA A, Assistant Deputy Director of Outreach & Education	CEA	Statement of Qualifications ⁷	4/22/22	18
CEA A, Assistant Deputy Director of Research & Strategic Initiatives	CEA	Statement of Qualifications	6/30/22	6
CEA B, Assistant Deputy Director of Conflict Resolution	CEA	Statement of Qualifications	7/26/22	12
CEA B, Assistant Deputy Director of Quality Assurance & Reporting Unit	CEA	Statement of Qualifications	12/15/21	3
Supervising Attorney	Departmental Open	Training and Experience ⁸	3/18/22	0

IN COMPLIANCE	FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CRU reviewed five open examinations which the CRD administered in order to create eligible lists from which to make appointments. The CRD published and distributed examination bulletins containing the required information for all examinations. Applications received by the CRD 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

⁷ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁸ 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.

no deficiencies in the examinations that the CRD 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, September 1, 2021, through May 31, 2022, the CRD made 56 appointments. The CRU reviewed 22 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA B, Assistant Deputy Director of Quality Assurance & Reporting Unit	CEA	CEA	Full Time	1
Accounting Administrator II	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Limited Term	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	2
Attorney IV	Certification List	Permanent	Full Time	1
Fair Employment And Housing Consultant III (Specialist)	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA B, Assistant Deputy Director of Quality Assurance & Reporting Unit	CEA	CEA	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Legal Secretary	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Senior Fair Employment and Housing Counsel (Specialist)	Certification List	Permanent	Full Time	2
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	2
Senior Personnel Specialist	Temporary	Intermittent	Full Time	1
Associate Governmental Program Analyst	Transfer	Limited Term	Full Time	1
Fair Employment and Housing Consultant III (Specialist)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1

SEVERITY: TECHNICAL	FINDING NO. 2 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME
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Summary: The CRD failed to retain three NOPAs, two job announcements, and two job applications. This is the third consecutive time this has been a finding for the CRD.

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

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

Cause: The CRD states that the cause of this finding was human error.

Corrective Action: Within 90 days of the date of this report, the CRD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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
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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 CRD’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 Director of the CRD. The CRD 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, December 1, 2021, through August 31, 2022, the CRD had 22 PSC’s that were in effect. The CRU reviewed 11 of those, which are listed below:

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Benjamin Electric	Electrical	\$9,999	Yes	Yes
CA & C Video Productions	Audio Video	\$9,999	Yes	No
GDS Moving & Installation Inc	Moving	\$50,000	Yes	Yes
Housing Rights	Investigation	\$280,000	Yes	No

Vendor	Services	Contract Amount	Justification Identified?	Union Notification?
Center				
Industrial Electronic Systems	System Maintenance	\$9,600	Yes	Yes
Intercon Security Systems Inc	Security	\$456,156	Yes	Yes
Lyndon Cudlitz Consulting	Training	\$10,000	Yes	Yes
Mixteco Indigena Community	Translation	\$9,999	Yes	No
Natively Fluent, Inc.	Translation	\$9,999	Yes	Yes
Softfile	Document Conversion	\$350,000	Yes	Yes
Vivien B Williamson	Mediation	\$4,250	Yes	Yes

SEVERITY: SERIOUS	FINDING NO. 4 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The CRD did not notify unions prior to entering into 3 of the 11 PSC's reviewed. This is the second consecutive time this has been a finding for the CRD.

Criteria: Before a state agency executes a contract or amendment to a contract for personal services conditions specified within Government Code section 19130, subdivision (b), the agency shall notify all organizations that represent state employees who perform or could perform the type of work that is called for within the contract, unless exempted under Government Code section 19132, subdivision (b)(1). (Cal. Code Regs., tit. 2, § 547.60.2.)

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

Cause: The CRD states that the cause of this finding was human error.

Corrective Action: Departments are responsible for notifying all organizations that represent state employees who perform or could perform the type of work to be contracted prior to executing a PSC. The PSC's reviewed during this compliance review involved several services and functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CRD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations section 547.60.2. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

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

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

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 CRD’s mandated training program that was in effect during the compliance review period, September 1, 2020, through August 31, 2022.

SEVERITY: VERY SERIOUS	FINDING NO. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The CRD did not provide ethics training to 46 of 101 existing filers. In addition, the CRD did not provide ethics training to 13 of 24 new filers within six months of their appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The CRD states that the cause of this finding was improper documentation tracking to ensure employees comply with training requirements.

Corrective Action: Within 90 days of this report, the CRD 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
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Summary: The CRD did not provide basic supervisory training to 1 of 4 new supervisors within 12 months of appointment; and did not provide manager training to 1 of 2 new managers within 12 twelve months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period.(Gov. Code, § 19995.4, subd. (b).)

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

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 CRD states that although the HR office notifies all supervisory/managerial staff of mandatory supervisory training, the CRD lacked a tracking mechanism to follow-up and ensure compliance.

Corrective Action: Within 90 days of the date of this report, the CRD 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
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Summary: The CRD did not provide sexual harassment prevention training to 11 of 14 new supervisors within 6 months of their appointment. In addition, the CRD did not provide sexual harassment prevention training to 2 of 35 existing supervisors every 2 years.

The CRD did not provide sexual harassment prevention training to 29 of 120 existing non-supervisors every 2 years.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors 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 supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The CRD states that the cause of this finding was improper documentation tracking to ensure employees comply with training requirements.

Corrective Action: Within 90 days of the date of this report, the CRD 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 rate⁹ 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, September 1, 2021, through May 31, 2022, the CRD made 56 appointments. The CRU reviewed 5 of those appointments to determine if the CRD applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Officer (Specialist)	Certification List	Limited Term	Full Time	\$4,701
Information Technology Specialist II	Certification List	Permanent	Full Time	\$9,878
Legal Secretary	Certification List	Permanent	Full Time	\$3,717
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,287
Staff Services Manager I	Certification List	Permanent	Full Time	\$7,076

IN COMPLIANCE	FINDING NO. 8 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the salary determinations that were reviewed. The CRD 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.

⁹ "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).

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, September 1, 2021, through May 31, 2022, the CRD employees made three alternate range movements within a classification. The CRU reviewed the three alternate range movements to determine if the CRD 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)
Fair Employment and Housing Counsel	A	B	Full Time	\$8,375
Fair Employment and Housing Counsel	B	C	Full Time	\$8,375
Staff Services Analyst	A	B	Full Time	\$4,396

SEVERITY: VERY SERIOUS	FINDING NO. 9 ALTERNATE RANGE MOVEMENT DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES
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Summary: The CRU found the following error in the CRD’s determination of employee compensation:

Classification	Description of Finding	Criteria
Fair Employment And Housing Counsel	Employee should have been placed into Range C of the Fair Employment & Housing Counsel classification as they met all of the Range C criteria, resulting in the employee being undercompensated.	Alternate Range Criteria 250

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220.)

Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

Severity: Very Serious. In one circumstance, the CRD failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules not in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The CRD states that the cause of this finding was human error.

Corrective Action: Within 90 days of the date of this report, the CRD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that employees are compensated correctly. The CRD must establish an audit system to correct current compensation transactions as well as future transactions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 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.¹⁰ (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 comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

¹⁰ 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.

During the period under review, September 1, 2021, through May 31, 2022, the CRD authorized eight HAM requests. The CRU reviewed three of those authorized HAM requests to determine if the CRD correctly applied Government Code section 19836 and appropriately verified, approved, and documented candidates' extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney IV	Certification List	Permanent	\$11,020 - \$14,149	\$14,149
Senior Fair Employment And Housing Counsel (Specialist)	Certification List	Permanent	\$9,976 - \$12,798	\$11,101
Senior Fair Employment And Housing Counsel (Specialist)	Certification List	Permanent	\$9,976 - \$12,798	\$10,200

IN COMPLIANCE	FINDING NO. 10 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM requests the CRD made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, September 1, 2021, through May 31, 2022, the CRD issued bilingual pay to 23 employees. The CRU reviewed 13 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Administrator I, Fair Employment and Housing	S01	Full Time	1
Associate Governmental Program Analyst	R01	Full Time	3
CEA	M01	Full Time	1
Fair Employment and Housing Consultant III (Specialist)	R01	Full Time	2
Fair Employment and Housing Counsel	R02	Full Time	2
Legal Secretary	R04	Full Time	1
Office Technician (Typing)	R04	Full Time	1
Staff Services Manager I	S01	Full Time	2

SEVERITY: IN COMPLIANCE	FINDING NO. 11 BILINGUAL PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the bilingual pay authorized to employees 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, September 1, 2021, through May 31, 2022, the CRD authorized 548 pay differentials.¹¹ The CRU reviewed 47 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	No. of Positions	Pay Differential	Monthly Amount
Accounting Administrator I (Supervisor)	1	453	\$50
Accounting Officer (Specialist)	1	453	\$50
Administrative Assistant II	1	453	\$50
Associate Accounting Analyst	1	440	\$260
Associate Governmental Program Analyst	4	453	\$50
Associate Personnel Analyst	2	453	\$50
Attorney IV	3	453	\$50
Chief Counsel, Department of Fair Employment And Housing	1	440	\$260
Deputy Director of Executive Programs	2	440	\$260
Fair Employment and Housing Consultant III (Specialist)	5	440	\$260
Fair Employment and Housing Counsel	3	453	\$50
Information Technology Associate	1	440	\$260
Information Technology Specialist I	2	440	\$260
Information Technology Specialist II	2	453	\$50
Information Technology Supervisor I	1	440	\$260
Labor Relations Manager I	1	453	\$50
Legal Secretary	1	440	\$260
Office Technician (Typing)	4	453	\$50
Personnel Specialist	1	440	\$260
Senior Fair Employment and Housing Counsel (Specialist)	3	453	\$50
Senior Legal Analyst	1	440	\$260
Senior Personnel Specialist	1	440	\$260
Staff Services Analyst (General)	2	440	\$260
Staff Services Manager I	2	453	\$50
Staff Services Manager II (Supervisory)	1	453	\$50

¹¹ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

SEVERITY: VERY SERIOUS	FINDING NO. 12 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS
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Summary: The CRU found 7 errors in the 47 pay differentials reviewed:

Classification	Area	Description of Findings	Criteria
Accounting Officer (Specialist)	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453
Administrative Assistant II	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453
Associate Governmental Program Analyst	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453
Deputy Director of Executive Programs	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453
Fair Employment and Housing Counsel	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453
Senior Fair Employment and Housing Counsel (Specialist)	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453
Staff Services Manager II (Supervisory)	Telework Stipend Differential	Department failed to supply supporting documentation for the employee who is eligible for the pay differential. Employee was undercompensated.	Pay Differential 453

Criteria: A pay differential may be appropriate when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or recruitment and retention. (CalHR Classification and Pay Manual Section 230.)

Severity: Very Serious. The CRD 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 CRD states that the cause of this finding was human error.

Corrective Action: Within 90 days of the date of this report, the CRD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 453 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 excluded¹² 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

¹² "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, September 1, 2021, through May 31, 2022, the CRD issued OOC pay to four employees. The CRU reviewed four of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Accounting Administrator I (Supervisor)	S01	Accounting Administrator II	12/31/21 - 4/30/22
Attorney IV	R02	Assistant Chief Counsel	1/01/22 - 2/18/22
Office Technician (Typing)	R04	Staff Services Analyst	7/26/21 - 11/26/21
Office Technician (Typing)	R04	Staff Services Analyst	7/26/21 - 11/26/21

SEVERITY: VERY SERIOUS	FINDING NO. 13	INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY
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Summary: The CRU found four errors in the CRD’s authorization of OOC pay:

Classification	Out-of-Class Classification	Description of Findings	Criteria
Accounting Administrator I (Supervisor)	Accounting Administrator II	Employee was overcompensated for out-of-class pay while performing the duties at the higher level classification.	Pay Differential 236

Attorney IV	Assistant Chief Counsel	Employee was overcompensated for out-of-class pay while performing the duties at the higher level classification.	Pay Differential 236
Office Technician (Typing)	Staff Services Analyst	Employee was overcompensated for 2 days of out-of-class pay while performing the duties at the higher level classification.	Pay Differential 236
Office Technician (Typing)	Staff Services Analyst	Employee was overcompensated for 2 days of out-of-class pay while performing the duties at the higher level classification.	Pay Differential 236

Criteria: An employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment is of unusual urgency, nature, volume, location, duration, or other special characteristics; and, cannot feasibly be met through use of other civil service or administrative alternatives. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.

Severity: Very Serious. The CRD 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 CRD states that the cause of this finding was human error.

Corrective Action: Within 90 days of the date of this report, the must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 236. Copies of relevant documentation demonstrating that the

corrective action has been implemented must be included with the corrective action response.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used 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 days¹³ worked and paid absences¹⁴, 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 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).)

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June),

¹³ For example, two hours or ten hours count as one day.

¹⁴ For example, vacation, sick leave, compensating time off, etc.

regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the CRD had 16 positive paid employees whose hours were tracked. The CRU reviewed 12 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Accounting Officer	Intermittent	7/1/21 – 6/30/22	647 Hours
Associate Governmental Program Analyst	Intermittent	7/1/21 – 6/30/22	721.75 Hours
Fair Employment and Housing Consultant III (Specialist)	Intermittent	7/1/21 – 6/30/22	872.26 Hours
Fair Employment and Housing Consultant III (Specialist)	Intermittent	7/1/21 – 6/30/22	912.25 Hours
Fair Employment and Housing Counsel	Intermittent	7/1/21 – 6/30/22	935.50 Hours
Fair Employment and Housing Counsel	Intermittent	7/1/21 – 6/30/22	190.75 Hours
Information Technology Specialist II	Intermittent	7/1/21 – 6/30/22	864.50 Hours
Information Technology Specialist II	Intermittent	7/1/21 – 6/30/22	533.50 Hours
Information Technology Specialist II	Intermittent	7/1/21 – 6/30/22	48 hours
Legal Analyst	Intermittent	7/1/21 – 6/30/22	1935 Hours
Senior Personnel Specialist	Intermittent	7/1/21 – 6/30/22	212.65
Staff Services Analyst	Intermittent	7/1/21 – 6/30/22	813 Hours

IN COMPLIANCE	FINDING NO. 14 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CRD 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, June 1, 2021, through May 31, 2022, the CRD authorized 44 ATO transactions. The CRU reviewed 26 of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Accounting Analyst	3/17/22 – 3/22/22	32 Hours
Associate Governmental Program Analyst	8/12/21 – 8/16/21	18 Hours
Associate Governmental Program Analyst	8/3/21 – 8/6/21	32 Hours
Associate Governmental Program Analyst	1/10/22 – 1/21/22	80 Hours
Associate Governmental Program Analyst	1/3/22 – 1/11/22	56 Hours
Associate Personnel Analyst	1/10/22 – 1/14/22	40 Hours
Associate Personnel Analyst	1/10/22 – 1/18/22	56 Hours
Attorney IV	9/7/21 – 9/9/21	16 Hours
Deputy Director	1/3/22 – 1/7/22	40 Hours
Fair Employment and Housing Consultant III (Specialist)	8/5/21 – 8/31/21	45 Hours
Fair Employment and Housing Consultant III (Specialist)	1/3/22	7 Hours
Fair Employment and Housing Consultant III (Specialist)	5/18/22 – 5/20/22	24 Hours
Fair Employment and Housing Consultant III (Specialist)	7/19/21 – 7/30/21	72 Hours
Fair Employment and Housing Consultant III (Specialist)	6/24/21 – 6/25/21	16 Hours
Fair Employment and Housing Counsel	9/22/21 – 9/23/21	16 Hours
Fair Employment and Housing Counsel	5/19/22 – 5/20/22	16 Hours
Fair Employment and Housing Counsel	2/3/22 – 2/4/22	16 Hours
Fair Employment and Housing Counsel III	9/10/21	8 Hours
Office Technician (Typing)	8/3/21 – 8/5/21	24 Hours
Office Technician (Typing)	1/3/22 – 1/14/22	80 Hours

Classification	Time Frame	Amount of Time on ATO
Senior Fair Employment and Housing Counsel (Specialist)	5/26/22 – 5/27/22	16 Hours
Staff Services Analyst	2/9/22 – 2/18/22	55 Hours
Staff Services Analyst	5/27/22 – 6/3/22	40 Hours
Staff Services Analyst	1/18/22 – 1/19/22	16 Hours
Staff Services Manager I	6/3/21 – 6/10/21	80 Hours
Staff Services Manager II	9/27/21 – 10/10/21	80 Hours

SEVERITY: SERIOUS	FINDING NO. 15 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED
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Summary: The CRD did not grant ATO in conformity with the established policies and procedures. Of the 26 ATO authorizations reviewed by the CRU, 7 were found to be out of compliance for failing to document justification for ATO.

Criteria: Appointing authorities are authorized to approve ATO for up to five working days. (Gov. Code, § 19991.10.) Furthermore, they “have delegated authority to approve up to 30 calendar days.” (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure policy compliance. Findings of non-compliance may result in the revocation of delegated privileges.

Cause: The CRD states that the cause of this finding was human error.

Corrective Action: Within 90 days of the date of this report, the CRD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19991.10 and Human Resources Manual Section 2121. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave Auditing and Timekeeping

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

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, March 1, 2022, through May 30, 2022, the CRD reported 28 units comprised of 251 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
March 2022	102	3	3	0
March 2022	253	18	18	0
April 2022	107	3	3	0
April 2022	278	31	31	0
May 2022	278	31	31	0

IN COMPLIANCE	FINDING NO. 16 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CRD kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

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.*)

IN COMPLIANCE	FINDING NO. 17 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the CRD’s commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the CRD’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 CRD did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 18 WORKERS’ COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU verified that the CRD 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 CRD 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 30 permanent CRD employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

SEVERITY: SERIOUS	FINDING NO. 19 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The CRD did not provide annual performance appraisals to 5 of 30 employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the CRD.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee’s probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all employees are appraised of work performance issues and/or goals in a systematic manner.

Cause: The CRD states that although the HR office notifies all supervisory/managerial staff to provide their employees with annual performance appraisals, the CRD lacked a tracking mechanism to follow-up and ensure compliance.

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

Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The CRD's response is attached as Attachment 1.

SPB REPLY

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