



COMPLIANCE REVIEW REPORT

EMPLOYMENT DEVELOPMENT DEPARTMENT

Compliance Review Unit
State Personnel Board
December 4, 2020

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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 Employment Development Department (EDD) 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	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Examinations	Department Did Not Comply with Documentation Requirements for Permanent Withholds
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Those That Were Provided Were Untimely
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Incorrect Authorization of Pay Differentials
Compensation and Pay	Incorrect Authorization of Out-of-Class Pay

Area	Finding
Leave	Department Did Not Properly Monitor Time Worked for All Positive Paid Employees
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input Is Keyed Accurately and Timely
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

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

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The Employment Development Department (EDD) provides a variety of services to businesses, workers, and job seekers. The EDD administers several multi-billion-dollar benefit programs including the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs that provide financial stability to workers and their communities. The EDD also provides critical employment service programs to Californians, collects the state's labor market information and employment data, and serves as one of the nation's largest tax agencies through the collection of payroll taxes. In this manner, the EDD strengthens the economic vitality of Californians and their communities. The EDD's mission is to enhance California's economic growth and prosperity by collaboratively delivering valuable and innovative services to meet the evolving needs of employers, workers, and job seekers.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the EDD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The primary objective of the review was to determine if the EDD'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 EDD's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the EDD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the EDD's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

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

The EDD did not make any additional appointments nor conduct any unlawful appointment investigations during the compliance review period.

The EDD's appointments were also selected for review to ensure the EDD applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the EDD provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the EDD did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, or arduous pay.

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

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

The EDD's PSC's were also reviewed.² It was beyond the scope of the compliance review to make conclusions as to whether the EDD's justifications for the contracts were legally sufficient. The review was limited to whether the EDD's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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, managers, and CEAs were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the EDD's Leave Activity and Correction Certification forms to verify that the EDD created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the EDD'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 EDD'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 EDD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of EDD positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

Lastly, the EDD review was suspended for a period of six months, from March 2020 through September 2020, due to the EDD's activities related to COVID-19.

²If 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.

On October 22, 2020, 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's written response on November 2, 2020, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, February 1, 2019, through July 31, 2019, the EDD conducted 32 examinations. The CRU reviewed eight of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) B, Chief, Northern Workforce Services Division	CEA	Statement of Qualifications (SOQ) ³	3/22/2019	20
CEA B, Chief, Technology Governance Division	CEA	SOQ	4/22/2019	12
Associate Tax Auditor	Departmental Promotional	Training and Experience (T&E) ⁴	5/10/2019	20
Disability Insurance Program Manager I	Departmental Promotional	T&E	4/17/2019	50
Employment Development Administrator	Departmental Promotional	T&E	6/11/2019	35
Employment Program Manager I	Departmental Promotional	T&E	5/15/2019	19
Staff Tax Auditor	Departmental Promotional	T&E	2/6/2019	27
Tax Administrator III	Departmental Promotional	T&E	6/28/2019	11

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

The CRU reviewed six departmental promotional and two open 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. Applicants were notified about the next phase of the examination process.

³ 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.

⁴ 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.

After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the EDD conducted during the compliance review period.

Permanent Withhold Actions

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

During the period under review, February 1, 2019, through July 31, 2019, the EDD conducted 42 permanent withhold actions. The CRU reviewed 25 of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Employment Program Representative	8HRA101	1/17/2018	7/17/2019	Failed to meet minimum qualifications
Office Technician (Typing)	4PB2402	10/30/2018	10/30/2020	Failed to meet minimum qualifications

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Program Technician II	2PB30	3/9/2019	3/9/2021	Failed to meet minimum qualifications
Research Data Analyst II	8PB38	11/19/2018	11/19/2019	Failed to meet minimum qualifications
Staff Services Manager I	9PB19	3/27/2019	3/27/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	6/19/2018	6/19/2019	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	4/6/2019	4/6/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	5/28/2019	5/28/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	3/2/2019	3/2/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	4/24/2019	4/24/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	4/10/2019	4/10/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	6/8/2019	6/8/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	6/17/2019	6/17/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	4/23/2019	4/23/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	6/3/2019	6/3/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	9/17/2018	9/17/2019	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	5/22/2019	5/22/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	3/31/2019	3/31/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	5/10/2019	5/10/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	5/28/2019	5/28/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	7/28/2019	7/28/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	8/28/2018	8/28/2019	Failed to meet minimum qualifications

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Tax Compliance Representative	7PB50	1/8/2019	1/8/2020	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	10/10/2018	10/10/2019	Failed to meet minimum qualifications
Tax Compliance Representative	7PB50	3/5/2019	3/5/2020	Failed to meet minimum qualifications

FINDING NO. 2 – Department Did Not Comply with Documentation Requirements for Permanent Withholds

Summary: While the EDD was able to communicate the reasons for the above mentioned withholds, EDD did not provide minimum qualifications withhold determination worksheets (CalHR 272) for the CRU to review.

Criteria: HR Manual Section 1105 mandates that Human Resources offices processing withhold actions must use the appropriate Withhold Determination Worksheet to document the withhold decision. The worksheets are (1) CalHR Form 272 – Minimum Qualifications Withhold Determination Worksheet or (2) CalHR Form 267 – Withhold for Cause Determination Worksheet.

Further, human resources offices are required to maintain the following withhold documentation for a period of five years:

1. Withhold Determination Worksheet
2. Job vacancy posting
3. Candidate’s application package (including the STD Form 678, and all received documents)
4. Supporting documentation for the withhold determination
5. Copies of all non-system generated correspondence

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

Cause: The EDD states that they documented the information for withholds using letters sent to candidates. The EDD further states that on February 13, 2020, CalHR informed them that the CalHR Form 272

is a worksheet that can be used as a tool to help make the withhold determination, but it is not required to be used. However, recognizing the importance of documentation, the EDD claims that they began using the CalHR Form 272 to document withholds effective March 4, 2020.

SPB Reply: HR Manual Section 1105, effective February 2, 2018, provides that either the CalHR Form 272 or CalHR Form 267 must be used to document withhold actions; there was no evidence provided that EDD utilized either form. Further, the guidance the EDD received from the CalHR was dated *after* the review period. Lastly, SPB and CalHR conferred, and agree that absent a change in existing policy, CalHR Forms 272 or 267 are required to document withhold actions.

Corrective Action: Within 90 days of the date of this report, the EDD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 1105 in processing withhold actions. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, February 1, 2019, through July 31, 2019, the EDD made 715 appointments. The CRU reviewed 97 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
CEA B, Chief, Northern Workforce Services Division	CEA	Permanent	Full Time	1
CEA B, Chief, Technology Governance Division	CEA	Permanent	Full Time	1
Accountant I (Specialist)	Certification List	Limited Term	Full Time	1
Accountant I (Specialist)	Certification List	Permanent	Full Time	3
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	3
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Custodian	Certification List	Permanent	Full Time	1
Disability Insurance Program Manager I	Certification List	Limited Term	Full Time	1
Disability Insurance Program Manager I	Certification List	Permanent	Full Time	1
Disability Insurance Program Manager II	Certification List	Limited Term	Full Time	1
Disability Insurance Program Manager III	Certification List	Permanent	Full Time	1
Disability Insurance Program Representative	Certification List	Limited Term	Full Time	1
Disability Insurance Program Representative	Certification List	Permanent	Full Time	2
Employment Development Specialist II	Certification List	Permanent	Full Time	2
Employment Program Manager I	Certification List	Permanent	Full Time	1
Employment Program Manager II	Certification List	Permanent	Full Time	1
Employment Program Representative	Certification List	Permanent	Full Time	2
Graphic Designer II	Certification List	Permanent	Full Time	1
Information Technology Manager II	Certification List	Permanent	Full Time	2
Information Technology Specialist I	Certification List	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Information Technology Specialist II	Certification List	Permanent	Full Time	2
Information Technology Supervisor II	Certification List	Permanent	Full Time	2
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	3
Research Data Analyst II	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Senior Tax Compliance Representative (Specialist)	Certification List	Permanent	Full Time	3
Staff Services Analyst (General)	Certification List	Limited Term	Intermittent	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	3
Staff Services Manager I	Certification List	Permanent	Full Time	3
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	2
Tax Administrator I, Employment Development Department	Certification List	Limited Term	Full Time	1
Tax Administrator I, Employment Development Department	Certification List	Permanent	Full Time	4
Tax Auditor, Employment Development Department	Certification List	Permanent	Full Time	1
Tax Compliance Representative	Certification List	Permanent	Full Time	3
Warehouse Worker	Certification List	Permanent	Full Time	1
Disability Program Manager II	LEAP	Temporary	Full Time	1
Employment Program Representative	LEAP	Temporary	Full Time	2
Office Technician (Typing)	LEAP	Temporary	Intermittent	1
Program Technician	LEAP	Temporary	Intermittent	1
Program Technician	LEAP	Temporary	Full Time	4
Staff Services Analyst (General)	LEAP	Temporary	Full Time	1
Associate Governmental Program Analyst	Training and Development	Permanent	Full Time	1
Employment Program Manager I	Training and Development	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Disability Insurance Program Representative	Training and Development	Permanent	Full Time	1
Program Technician II	Training and Development	Permanent	Full Time	1
Accounting Officer (Specialist)	Transfer	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Limited Term	Full Time	2
Associate Tax Auditor	Transfer	Permanent	Full Time	1
Disability Insurance Program Representative	Transfer	Permanent	Full Time	1
Employment Program Representative	Transfer	Permanent	Full Time	2
Information Technology Associate	Transfer	Permanent	Full Time	1
Information Technology Manager I	Transfer	Permanent	Full Time	2
Information Technology Supervisor	Transfer	Permanent	Full Time	1
Office Assistant (Typing)	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Intermittent	1
Program Technician II	Transfer	Permanent	Full Time	1
Program Technician III	Transfer	Permanent	Full Time	1
Research Data Analyst I	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1
Tax Administrator II (Specialist)	Transfer	Permanent	Full Time	1
Tax Auditor, Employment Development Department	Transfer	Permanent	Full Time	1

FINDING NO. 3 – Probationary Evaluations Were Not Provided for all Appointments Reviewed and Those That Were Provided Were Untimely

Summary: The EDD did not provide 4 probationary reports of performance for 4 of the 97 appointments reviewed by the CRU. In addition, the EDD did not provide four probationary reports of performance in a timely manner, as reflected in the table below. This is the second time the

EDD has had a finding of not providing probationary evaluations as required.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Disability Insurance Program Manager III	Certification List	1	1
Senior Tax Compliance Representative (Specialist)	Certification List	1	1
Associate Governmental Program Analyst	Certification List	1	1
Attorney	Certification List	1	1

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.)

A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the

probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The EDD states that they relied on a manual process for ensuring completion of probationary reports. The EDD states that, in late summer of 2020, they launched a performance management module to allow EDD to have greater oversight and ensure greater compliance with performance management regulatory requirements.

Corrective Action: Within 90 days of the date of this report, the EDD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. 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).)

FINDING NO. 4 – A Disability Advisory Committee Has Not Been Established

- Summary:** The EDD does not have an active DAC.
- Criteria:** 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).)
- Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.
- Cause:** The previous DAC experienced a large number of retirements and other types of attrition, coupled with the retirement of an EEO Officer, led to the dissolution of the DAC.
- Corrective Action:** EDD has taken steps to re-establish its DAC in October 2019, and reports its first meeting in February 2020. However, within 90 days of the date of this report, the EDD must submit to the SPB a written corrective action response which addresses the actions the department will implement to ensure the continuation of an active DAC, comprised of members who have disabilities or who have an interest in disability issues. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and meeting minutes, must be included with the corrective action response.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person

performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC’s, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, February 1, 2019, through July 31, 2019, the EDD had 375 PSC’s that were in effect. The CRU reviewed 53 of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
AAA Imaging Solutions	Maintenance Services	5/1/19 – 8/1/19	\$472.00	Yes	Yes
ABC Office Systems	Equipment Maintenance	4/10/19 – 7/10/19	\$525.00	Yes	Yes
Allied Network Solutions Inc.	Software Maintenance	12/20/18 – 12/19/20	\$4,800.00	Yes	Yes
Ameritech Business Systems	Maintenance Services	6/6/19 – 9/6/19	\$550.00	Yes	Yes
A-Plus Printer Services	Equipment Maintenance	4/9/19 – 7/9/19	\$1,110.00	Yes	Yes
A-Plus Printer Services	Equipment Maintenance	4/10/19 – 7/10/19	\$550.00	Yes	Yes
ASPE a Division of Fortis College	Training	12/15/18 - 6/30/19	\$16,016.20	Yes	Yes

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
BC Plumbing Company	Plumbing Services	2/1/19 – 1/30/22	\$30,000.00	Yes	Yes
Cal Poly Pomona Foundation Inc.	Training Services	1/23/19 – 1/23/21	\$9,525.00	Yes	Yes
Cal Tech Copier Inc.	Equipment Maintenance	4/10/19 – 7/10/19	\$600.00	Yes	Yes
California Environmental	HVAC Services	4/1/19 – 3/31/22	\$22,680.00	Yes	Yes
California Labor Federation	Training	6/15/17 – 3/31/19	\$107,810.00	Yes	Yes
California Narcotic Officers Association	Investigator Training	4/24/19 – 4/24/19	\$45.00	Yes	Yes
California Workforce Association	Training	7/1/18 – 6/30/20	\$45,000.00	Yes	Yes
Carahsoft Technology	Training	4/8/19 – 9/27/19	\$7,526.88	Yes	Yes
CFC Network Inc.	Mail Courier Service	4/1/19 – 3/31/21	\$10,440.00	Yes	Yes
Courier Solutions Services LLC	Courier Services	4/1/19 – 6/30/19	\$3,000.00	Yes	Yes
CSUS College of Continuing Education	Meeting Space and Amenities	7/15/19 – 7/20/19	\$26,594.93	Yes	Yes
CTYD III Corp	Meeting Space and Amenities	5/15/19 – 5/16/19	\$3,541.32	Yes	Yes
Deque Systems Inc.	Accessibility Training	2/15/19 – 6/30/19	\$1,680.00	Yes	Yes
Door 28 Inc.	Exterior Door Repair	4/1/19 – 6/30/19	\$13,575.00	Yes	Yes
Ecotech Office Solutions Inc.	Equipment Maintenance	2/6/19 – 5/6/19	\$2,380.00	Yes	Yes
Ecotech Office Solutions Inc.	Equipment Maintenance	5/7/19 – 8/7/19	\$668.91	Yes	Yes

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
EG Brennan & Co Corp	Equipment Maintenance	3/27/19 – 6/30/19	\$500.00	Yes	Yes
Flintridge Center	Training	6/15/17 – 3/31/19	\$637,500.00	Yes	Yes
Frandsen Construction Inc.	Electrical Services	11/1/18 – 6/30/19	\$15,000.00	Yes	Yes
Friends of Californians with Disabilities Inc.	Meeting Space and Amenities	7/15/19 – 7/20/19	\$26,594.93	Yes	Yes
Global Knowledge Training LLC	IT Security Technical Training	3/25/19 – 6/30/19	\$49,782.20	Yes	Yes
ISinc	Information Technology	5/20/19 – 5/19/21	\$400,000.00	Yes	Yes
Legislative Bill Delivery Service	Legislative Delivery	1/1/19 – 12/31/19	\$1,440.00	Yes	Yes
M Corp	IT Consulting Services	3/13/18 – 2/28/22	\$1,499,520.00	Yes	Yes
MTZ Construction	Lobby Alterations	3/1/19 – 6/30/19	\$14,800.00	Yes	Yes
MTZ Construction	Lobby Alterations	4/1/19 – 6/30/19	\$58,000.00	Yes	Yes
National Association of UI Appeals	Training Services	4/2/19 – 6/30/19	\$990.00	Yes	Yes
Orkin Services of California	Emergency Pest Control Services	3/1/19 – 6/30/19	\$24,999.99	Yes	Yes
Partners in Communication LLC	ASL Interpreting	4/23/19 – 4/23/19	\$1,503.00	Yes	Yes
Performance Technology Partners	IT Consulting	2/6/19 – 2/5/20	\$748,440.00	Yes	Yes
Pitney Bowes Inc.	Maintenance	7/1/18 – 6/30/19	\$27,749.39	Yes	Yes

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Rayne Plumbing & Sewer Service Inc.	Plumbing Services	2/1/19 – 1/31/22	\$9,999.00	Yes	Yes
REF & Sons Inc.	Maintenance	3/1/19 – 2/28/21	\$30,000.00	Yes	Yes
RELX Inc.	Electronic Library Service	7/18/18 – 6/30/20	\$373,076.00	Yes	Yes
Sac Valley Electric Inc.	Electrical Services	4/1/19 – 3/31/22	\$15,000.00	Yes	Yes
Sign Up Interpreting Services LLC	Interpreting Services	2/1/19 – 6/30/19	\$9,999.00	Yes	Yes
Sign Up Interpreting Services LLC	Interpreting Services	1/28/19 – 1/28/19	\$173.20	Yes	Yes
Smile Business Products Inc.	Maintenance	9/1/18 – 8/31/20	\$9,051.68	Yes	Yes
SupportFocus Inc.	Consultant	4/15/19 – 1/14/23	\$1,287,000.00	Yes	Yes
The Conference Board	Data Subscription Services	1/24/19 – 12/31/19	\$136,622.00	Yes	Yes
Timothy Aldinger	Consulting Services	6/1/19 – 6/30/19	\$7,500.00	Yes	Yes
Titan Shred	Confidential Shredding	3/1/19 – 2/28/21	\$4,800.00	Yes	Yes
Trinity Technology Group Inc.	Other	2/4/19 – 2/28/21	\$1,116,986.00	Yes	Yes
United California Glass & Door	Installation Services	4/1/19 – 6/30/19	\$42,298.00	Yes	Yes
US National Corp	Painting Services	2/1/19 – 6/30/19	\$11,500.00	Yes	Yes
Verizon Business Network Services	Structured Cabling Services	11/1/18 – 10/31/19	\$599,991.30	Yes	Yes

FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements

The total dollar amount of all the PSC’s reviewed was \$7,469,905.93. It was beyond the scope of the review to make conclusions as to whether EDD justifications for the contracts were legally sufficient. For all PSC’s reviewed, the EDD provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, EDD complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the EDD PSC’s complied with civil service laws and board rules.

Mandated Training

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

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (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).) 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 biennial 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, August 1, 2017, through July 31, 2018.

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

Summary: The EDD did not provide ethics training to 14 of 1,105 existing filers.

Criteria: 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 EDD states that they relied on a manual system for ensuring completion of ethics training. The EDD states that, in late summer of 2020, they launched a performance management module to allow EDD to have greater oversight and ensure greater compliance with training regulatory requirements.

Corrective Action: Within 90 days of this report, the EDD must submit to the SPB a written corrective 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.

FINDING NO. 8⁵ – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The EDD did not provide sexual harassment prevention training to 8 of 48 new supervisors within 6 months of their appointment. In addition, the EDD did not provide sexual harassment prevention training to 55 of 979 existing 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, subd. (a).)

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 EDD, through an outside vendor, notifies all supervisors of sexual harassment prevention training requirements. However, 8 new and 38 existing supervisors did not complete their SHPT training within prescribed time limits.

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

⁵ Finding No. 7, Supervisory Training was Not Provided for all Supervisors, Managers and CEAs, was removed. Due to restrictions imposed by city/county/state governments due to Covid-19, the availability of the required trainings has impacted hiring authorities' ability to come into compliance in this area.

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 rate⁶ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, February 1, 2019, through July 31, 2019, the EDD made 715 appointments. The CRU reviewed 15 of those appointments to determine if the EDD applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Career Executive Assignment, B	Certification List	Permanent	Full Time	\$11,820
Disability Program Manager II	Certification List	Permanent	Full Time	\$6,740
Disability Program Manager III	Certification List	Permanent	Full Time	\$7,323
Employment Development Specialist II	Certification List	Permanent	Full Time	\$4,975
Employment Program Representative	Certification List	Permanent	Full Time	\$3,186
Program Technician II	Certification List	Permanent	Full Time	\$3,150
Program Technician II	Certification List	Permanent	Full Time	\$3,150
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,138
Tax Administrator I, EDD	Certification List	Permanent	Full Time	\$7,569

⁶ "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).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Tax Compliance Representative	Certification List	Permanent	Full Time	\$3,940
Tax Compliance Representative	Certification List	Permanent	Full Time	\$4,561
Office Technician (Typing)	Transfer	Permanent	Intermittent	\$3,190
Program Technician II	Transfer	Permanent	Full Time	\$3,042
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,136
Tax Administrator II, EDD	Transfer	Permanent	Full Time	\$9,133

FINDING NO. 9 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The EDD 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.

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, February 1, 2019, through July 31, 2019, the EDD employees made 143 alternate range movements within a classification. The CRU reviewed 22 of those alternate range movements to determine if the EDD 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)
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,960
Disability Insurance Program Representative	Range A	Range B	Full Time	\$3,512
Disability Insurance Program Representative	Range A	Range B	Full Time	\$3,512
Disability Insurance Program Representative	Range B	Range C	Full Time	\$4,197
Disability Insurance Program Representative	Range A	Range B	Full Time	\$3,635
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,960
Disability Insurance Program Representative	Range A	Range B	Full Time	\$3,635
Disability Insurance Program Representative	Range B	Range C	Full Time	\$4,412
Disability Insurance Program Representative	Range A	Range B	Full Time	\$3,877
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,960
Disability Insurance Program Representative	Range B	Range C	Full Time	\$4,534
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,960
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,689
Disability Insurance Program Representative	Range B	Range C	Full Time	\$4,403
Disability Insurance Program Representative	Range B	Range C	Full Time	\$4,412
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,960
Disability Insurance Program Representative	Range B	Range C	Full Time	\$4,348
Disability Insurance Program Representative	Range B	Range C	Full Time	\$3,960
Employment Program Representative	Range A	Range B	Full Time	\$3,512
Employment Program Representative	Range B	Range C	Full Time	\$3,960
Staff Services Analyst (General)	Range A	Range C	Full Time	\$4,136

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Tax Compliance Representative	Range B	Range C	Full Time	\$4,561

FINDING NO. 10 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found the following errors in the EDD’s determination of employee compensation:

Classification	Description of Finding(s)	Criteria
Disability Insurance Program Representative	Incorrect salary determination, resulting in the employee being overcompensated.	Cal. Code Regs., tit. 2, § 599.673
Tax Compliance Representative	Incorrect anniversary date, resulting in the employee being overcompensated.	Cal. Code Regs., tit. 2, § 599.676

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 two instances, the EDD 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: Error when calculating anniversary dates.

Corrective Action: EDD has corrected the alternate range movement transactions for these employees. However, within 90 days of the date of this report,

the EDD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that alternate ranges are appropriately calculated. The EDD 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.

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, February 1, 2019, through July 31, 2019, the EDD issued bilingual pay to 42 employees. The CRU reviewed 17 of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Time Base	No. of Appts.
Accountant I (Specialist)	R01	Full Time	1
Associate Governmental Program Analyst	R01	Full Time	1
Associate Governmental Program Analyst	R01	Part Time	1
Disability Insurance Program Representative	R01	Full Time	1
Employment Program Representative	R01	Full Time	5
Information Officer I (Specialist)	R01	Full Time	1

Classification	Collective Bargaining Identifier	Time Base	No. of Appts.
Program Technician II	R04	Full Time	3
Staff Services Analyst (General)	R01	Full Time	1
Student Assistant	E	Intermittent	1
Student Assistant	E	Part Time	1
Tax Compliance Representative	R01	Full Time	1

FINDING NO. 11 – Incorrect Authorization of Bilingual Pay

Summary: The CRU found the following errors in the EDD’s authorization of bilingual pay:

Classification	Description of Finding(s)	Criteria
Associate Governmental Program Analyst	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Disability Insurance Program Representative	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Program Technician II	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Program Technician II	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Program Technician II	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Staff Services Analyst (General)	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
Student Assistant	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as

proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a) (3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

Severity: Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: The EDD acknowledged the errors, and have taken corrective measures to prevent recurrence.

Corrective Action: Within 90 days of the date of this report, the EDD 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 7296 and Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, February 1, 2019, through July 31, 2019, the EDD issued pay differentials⁷ to 22 employees. The CRU reviewed 15 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Accounting Technician	254	\$100
Disability Insurance Program Representative	186	\$100
Investigator	173	\$200
Investigator	244	\$125
Investigator	244	\$125
Investigator	244	\$100
Program Technician	254	\$100
Program Technician II	254	\$100
Program Technician II	254	\$100
Program Technician II	254	\$100
Program Technician II	402	\$100
Program Technician III	254	\$100
Program Technician III	254	\$100
Supervising Criminal Investigator I, Employment Development Department	73	7%
Supervising Criminal Investigator II, Employment Development Department	244	\$125

FINDING NO. 12 – Incorrect Authorization of Pay Differentials

Summary: The CRU found the following 2 errors out of the 15 pay differentials reviewed:

⁷ For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.

Classification	Area	Description of Finding(s)	Criteria
Supervising Criminal Investigator I, Employment Development Department	Recruitment and Retention Pay	The employee's classification is not eligible to receive the 7% Longevity Pay Differential. Employee was overcompensated.	Pay Differential 73
Supervising Criminal Investigator II, Employment Development Department	Educational Incentive	The employee's classification is not eligible to receive the \$125 Educational Pay Differential. Employee was overcompensated.	Pay Differential 244

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

Severity: Very Serious. The EDD 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: Differentials were incorrectly applied.

Corrective Action: Within 90 days of the date of this report, the EDD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differentials 73 and 244 to 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 excluded⁸ 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 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 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 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, February 1, 2019, through July 31, 2019, the EDD issued OOC pay to 22 employees. The CRU reviewed seven of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
Associate Governmental Program Analyst	R01	Staff Services Manager I	2/14/19-3/29/19
Associate Governmental Program Analyst	R01	Staff Services Manager I	1/31/19-4/28/19
Mailing Machines Operator I	R04	Digital Print Operator I	1/10/19-1/31/19
Office Services Supervisor II (General)	S04	Mailing Machines Supervisor II	11/26/18-2/28/19

⁸ "Excluded employee" means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

Office Technician (Typing)	R04	Information Technology Associate	6/3/19-9/30/19
Supervising Criminal Investigator I, Employment Development Department	S07	Supervising Criminal Investigator II	3/15/19-7/12/19
Tax Administrator II, Employment Development Department	S01	Tax Administrator III, Employment Development Department	7/1/19-8/30/19

FINDING NO. 13 – Incorrect Authorization of Out-of-Class Pay

Summary: The CRU found the following errors in the EDD’s authorization of OOC pay:

Classification	Out-of-Class Classification	Description of Finding(s)	Criteria
Mailing Machines Operator I	Digital Print Operator II	OOC was not properly calculated while the employee was performing the duties at the higher-level classification, resulting in the employee being undercompensated.	Pay Differential 91
Office Technician (Typing)	Information Technology Associate	Department failed to recalculate the out-of-class salary after a general salary increase, resulting in the employee being undercompensated.	Pay Differential 91

Criteria: Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment and further, taken as a whole, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

Severity: Very Serious. The EDD 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 EDD states the errors were caused by miscalculations of the daily rate and the out-of-class salary. The EDD states that they will add an additional step to review salary determinations of all employees on out-of-class assignments when there is a general salary increase.

Corrective Action: Within 90 days of the date of this report, the EDD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Gov. Code, § 599.810 and Pay Differential 91. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave

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

completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days⁹ worked and paid absences,¹⁰ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the EDD had 307 positive paid employees whose hours were tracked. The CRU reviewed 15 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

⁹ For example, two hours or ten hours counts as one day.

¹⁰ For example, vacation, sick leave, compensating time off, etc.

Classification	Time Base	Time Frame	Time Worked
Assistant Chief Counsel	Intermittent	7/1/18 – 6/30/19	951 Hours
Custodian I	Intermittent	1/1/18 – 12/31/18	1,566 Hours
Employment Program Representative	Intermittent	7/1/18 – 6/30/19	953 Hours
Employment Program Representative	Intermittent	1/1/18 – 12/31/18	1,578.5 Hours
Employment Program Representative	Intermittent	1/1/18 – 12/31/18	1,610 Hours
Employment Program Representative	Intermittent	1/1/18 – 12/31/18	1,609.25 Hours
Employment Program Representative	Intermittent	1/1/18 – 12/31/18	1,624 Hours
Graduate Student Assistant	Intermittent	8/1/18 – 7/31/19	1,081 Hours
Information Technology Specialist I	Intermittent	7/1/18 – 6/30/19	960 Hours
Information Technology Specialist I	Intermittent	7/1/18 – 6/30/19	845 Hours
Seasonal Clerk	Intermittent	8/1/18 – 7/31/19	1,379 Hours
Seasonal Clerk	Intermittent	8/1/18 – 7/31/19	1,446 Hours
Seasonal Clerk	Intermittent	8/1/18 – 7/31/19	1,379 Hours
Student Assistant	Intermittent	8/1/18 – 7/31/19	1,346.5 Hours
Tax Administrator I, Employment Development Department	Intermittent	7/1/18 – 6/30/19	888 Hours

FINDING NO. 14 – Department Did Not Properly Monitor Time Worked for All Positive Paid Employees

Classification	Tenure	Time Frame	Time Worked	Time Worked Over Limit
Custodian I	Permanent	1/1/18 – 12/31/18	1,566 Hours	66 Hours
Employment Program Representative	Permanent	1/1/18 – 12/31/18	1,578.5 Hours	78.5 Hours

Classification	Tenure	Time Frame	Time Worked	Time Worked Over Limit
Employment Program Representative	Permanent	1/1/18 – 12/31/18	1,610 Hours	110 Hours
Employment Program Representative	Permanent	1/1/18 – 12/31/18	1,609.25 Hours	109.25 Hours
Employment Program Representative	Permanent	1/1/18 – 12/31/18	1,624 Hours	124 Hours

Summary: The EDD did not consistently monitor the actual number of hours worked in order to ensure that five positive paid employees did not exceed the 1,500-hour limitation in any calendar year.

Criteria: A permanent intermittent employee may work up to 1,500 hours in any calendar year. The number of hours and schedule of work shall be determined based upon the operational needs of each department. (Applicable Bargaining Unit Agreements.)

Severity: Serious. The number of days or hours an individual may work in a permanent intermittent appointment is limited in the state civil service. To ensure permanent intermittent appointments are not made on a full-time basis, a maximum of 1,500 hours has been placed on the number of hours which a permanent intermittent employee may work any calendar year.

Cause: The EDD relied upon a manual tracking system to monitor time worked for positive paid employees that was not successful. The EDD states that they will implement an enterprise time-reporting system with a component to track the intermittent hours and provide an alert when employees are nearing the limit.

Corrective Action: Within 90 days of the date of this report, the EDD 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 21224, and California Code of Regulations, title 2, section 599.665, and/or applicable Bargaining Unit agreements. Copies of relevant documentation demonstrating

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

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, May 1, 2018, through April 30, 2019, the EDD placed 78 employees on ATO. The CRU reviewed 27 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Custodian	2/13/19	8 Hours
Employment Program Representative	10/16/18	3 Hours
Employment Program Representative	6/23/19 – 7/23/19	41.5 Hours
Employment Program Representative	4/24/18	1.25 Hours
Employment Program Representative	2/13/19	3.75 Hours
Employment Program Representative	2/13/19	8 Hours
Employment Program Representative	4/24/18	1.25 Hours
Employment Program Representative	4/24/18	2.25 Hours
Employment Program Representative	4/24/18	1.75 Hours
Employment Program Representative	4/24/18	2.75 Hours
Office Assistant (General)	6/12/19	1.25 Hours

Classification	Time Frame	Amount of Time on ATO
Office Assistant (General)	6/12/19	2.75 Hours
Office Assistant (Typing)	4/24/18	1.75 Hours
Office Assistant (Typing)	6/12/19	2.75 Hours
Office Assistant (Typing)	4/24/18	2.5 Hours
Office Assistant (Typing)	6/12/19	2.75 Hours
Office Assistant (Typing)	6/12/19	1.75 Hours
Office Assistant (Typing)	4/24/18	2.75 Hours
Office Assistant (Typing)	6/12/19	1.75 Hours
Office Technician (Typing)	4/24/18	2.75 Hours
Office Technician (Typing)	6/12/19	2.75 Hours
Office Technician (Typing)	11/16/18 – 11/30/18	14 Days
Program Technician	6/12/19	2.75 Hours
Program Technician	6/12/19	2.75 Hours
Program Technician II	6/12/19	1.75 Hours
Program Technician II	11/19/18 – 12/1/18	144 Hours
Student Assistant	2/13/19	4 Hours

FINDING NO. 15 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Leave Auditing and Timekeeping

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

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

During the period under review, February 1, 2019, through April 30, 2019, the EDD reported 423 units comprised of 21,857 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
April 2019	001	29	29	0
April 2019	309	149	149	0
April 2019	641	57	57	0
April 2019	857	58	58	0

FINDING NO. 16 – Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input Is Keyed Accurately and Timely

Summary: The EDD failed to provide documentation that it has implemented a monthly internal audit process to verify all timesheets were keyed accurately and timely.

Criteria: Each appointing power shall 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 an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

Severity: Serious. In order for Department leave accounting reports to reflect accurate data, the review of the leave accounting records and corrections, if necessary, are to be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. This means corrections are to be made prior to the next monthly leave activity report being produced.

Cause: The EDD states that due to their vast number of 7,000 employees, it is not feasible to audit the Leave Accounting System (LAS) against the Time and Attendance Report and the timesheet. The EDD claims that they have begun partnership with the State Controller's Office (SCO) to form methodology that allows a direct interface of timesheet information into LAS.

SPB Reply: While EDD is commended for proactively working with SCO to develop a more automated leave auditing solution, it still must create an audit process to verify all leave input is keyed accurately and timely.

Corrective Action: Within 90 days of the date of this report, the EDD must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process was documented and that all leave input is keyed accurately and timely. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

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

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹¹ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees¹² shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, February 1, 2019, through July 31, 2019, the EDD had 716 employees with non-qualifying pay period transactions. The CRU reviewed 37

¹¹ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

¹² As identified in Government Code sections 19858.3, subd. (a), 19858.3, subd. (b), or 19858.3, subd. (c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subd. (c) or California Code of Regulations, title 2, section 599.752 subd. (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

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

Type of Transaction	Time base	Number Reviewed
Non-qualifying	Full-Time	16
Non-qualifying	Half-Time	2
Qualifying	Full-Time	19

FINDING NO. 17 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

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

Policy and Processes

Nepotism

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

FINDING NO. 18 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the policy was disseminated to all staff and emphasized the EDD’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the EDD’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 subds. (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 EDD did not employ volunteers during the compliance review period.

FINDING NO. 19 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the EDD 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 EDD 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 100 permanent EDD employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Accountant I (Specialist)	8/31/18
Accountant I (Specialist)	10/25/18
Accountant I (Specialist)	12/21/18
Accountant I (Specialist)	6/8/18
Accounting Officer (Specialist)	8/25/18
Accounting Officer (Specialist)	5/30/18
Accounting Officer (Specialist)	7/7/18
Accounting Officer (Specialist)	8/16/18
Accounting Officer (Specialist)	8/8/18
Accounting Officer (Specialist)	8/28/18
Associate Tax Auditor, Employment Development Department	6/1/18
Associate Tax Auditor, Employment Development Department	7/1/18
Associate Tax Auditor, Employment Development Department	6/18/18
Associate Tax Auditor, Employment Development Department	9/14/18
Associate Tax Auditor, Employment Development Department	12/5/18
Associate Tax Auditor, Employment Development Department	10/15/18
Associate Tax Auditor, Employment Development Department	8/1/17
Associate Governmental Program Analyst	7/1/18
Associate Governmental Program Analyst	9/2/18
Associate Governmental Program Analyst	5/30/18
Associate Governmental Program Analyst	4/2/18

Classification	Date Performance Appraisals Due
Associate Governmental Program Analyst	5/1/18
Associate Governmental Program Analyst	10/1/18
Associate Governmental Program Analyst	9/30/18
Associate Governmental Program Analyst	10/18/18
Disability Insurance Program Representative	6/1/18
Disability Insurance Program Representative	11/1/18
Disability Insurance Program Representative	6/1/18
Disability Insurance Program Representative	6/1/18
Disability Insurance Program Representative	7/20/18
Disability Insurance Program Representative	12/11/18
Disability Insurance Program Representative	4/27/18
Disability Insurance Program Representative	10/29/18
Disability Insurance Program Representative	1/14/18
Disability Insurance Program Representative	11/17/18
Disability Insurance Program Representative	6/1/18
Disability Insurance Program Representative	8/30/18
Disability Insurance Program Representative	4/17/18
Disability Insurance Program Representative	10/1/18
Disability Insurance Program Representative	6/5/18
Employment Development Specialist II	9/23/18
Employment Program Manager I	6/1/18
Employment Program Manager I	6/8/18

Classification	Date Performance Appraisals Due
Employment Program Manager I	10/31/18
Employment Program Representative	6/8/18
Employment Program Representative	12/17/18
Employment Program Representative	5/2/18
Employment Program Representative	7/23/18
Employment Program Representative	5/11/18
Employment Program Representative	3/26/18
Employment Program Representative	6/15/18
Employment Program Representative	12/9/18
Employment Program Representative	6/26/18
Employment Program Representative	12/17/18
Employment Program Representative	10/26/18
Employment Program Representative	1/27/18
Employment Program Representative	11/17/18
Information Technology Associate	6/12/18
Information Technology Associate	5/9/18
Information Technology Manager I	1/30/18
Information Technology Specialist I	5/1/18
Information Technology Specialist I	6/30/18
Information Technology Specialist I	9/29/18
Information Technology Specialist I	9/30/18
Information Technology Specialist I	3/15/18
Information Technology Specialist II	1/12/18
Investigator	11/2/18
Mailing Machines Operator II	2/7/18
Office Assistant (Typing)	4/14/18
Office Technician (Typing)	7/13/18
Office Technician (Typing)	5/1/18
Office Technician (Typing)	6/28/18
Office Technician (General)	11/3/18
Office Technician (General)	4/1/18
Office Technician (General)	9/29/18
Personnel Supervisor I	12/15/18
Program Technician	12/16/18

Classification	Date Performance Appraisals Due
Program Technician	2/26/18
Program Technician II	8/19/18
Program Technician III	10/1/18
Research Data Specialist II	1/22/18
Research Data Specialist II	6/30/18
Senior Tax Compliance Representative (Specialist)	12/20/18
Senior Tax Compliance Representative (Specialist)	7/31/18
Senior Tax Compliance Representative (Specialist)	10/27/18
Senior Tax Compliance Representative (Specialist)	12/22/18
Senior Tax Compliance Representative (Specialist)	11/2/18
Staff Services Analyst (General)	6/14/18
Staff Services Manager I	6/20/18
Staff Services Manager I	11/29/18
Staff Services Manager II (Supervisory)	8/31/18
Staff Tax Auditor, Employment Development Department	9/1/18
Tax Administrator I, Employment Development Department	10/3/18
Tax Administrator I, Employment Development Department	5/22/18
Tax Administrator I, Employment Development Department	11/5/18
Tax Administrator I, Employment Development Department	9/9/18
Tax Auditor, Employment Development Department	10/3/18
Tax Auditor, Employment Development Department	8/3/18
Tax Compliance Representative	7/1/18
Warehouse Manager I	9/12/18

FINDING NO. 20 – Performance Appraisals Were Not Provided to All Employees

- Summary:** The EDD did not provide annual performance appraisals to 35 of 100 employees reviewed after the completion of the employee's probationary period.
- Criteria:** Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)
- Severity:** Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.
- Cause:** The EDD states that they relied on a manual process to notify department managers and supervisors of upcoming performance appraisals and to track compliance with regulatory requirements. The EDD states that, in late summer of 2020, they launched a performance management module to allow EDD to have greater oversight and ensure greater compliance with performance appraisal requirements.
- Corrective Action:** Within 90 days of the date of this report, the EDD 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 EDD's response is attached as Attachment 1.

SPB REPLY

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

M E M O R A N D U M

To: Diana Campbell, Compliance Manager
State Personnel Board

Date: November 2, 2020

From: Jill O'Connell
Employment Development Department

Subject: RESPONSE TO COMPLIANCE REVIEW REPORT

The Employment Development Department (EDD) takes compliance issues very seriously and has taken steps to ensure both current and future compliance with the State Personnel Board (SPB) audit findings.

This memorandum serves as a response to the findings of the 2019 Compliance Review Report.

Finding No. 2 – Department did not comply with Documentation requirements for permanent withholds

Cause: The EDD reached out to CalHR for clarification and guidance in utilizing the CalHR 272. Per CalHR, "The CalHR 272 is a worksheet that can be used as a tool to help you make the withhold determination. It is not required to be used." The EDD previously documented the information for withholds using letters sent to candidates. These were provided to SPB during the audit review process. The EDD recognizes the importance of documentation and following best practices. Effective March 4, 2020, the EDD began using the CalHR 272 to document withholds.

Finding No. 3 – Probationary evaluations were not provided for appointments reviewed and those that were reviewed were untimely

Cause: The EDD acknowledges the critical role that probationary reports play in ensuring a successful workforce. The EDD is a Department of over 7,000 employees, including over 1,200 managers and supervisors, and is regularly at various stages of its hiring process. The CRU found 4 appointments out of 97 appointments (4 percent) reviewed with a missing probation report. The EDD previously relied on a manual process for ensuring completion of probationary reports. After the findings in the previous audit, the EDD began searching for more effective ways to ensure compliance with probationary evaluations. In 2018, the EDD selected Cornerstone on Demand (CSOD), a Talent Management System (TMS), and launched the TMS in 2020. The TMS consists of a Learning Management System (LMS), Performance Management (PM) module, and Succession Planning. The TMS will allow EDD to have greater oversight and ensure greater compliance with many of its training and performance management regulatory requirements. The PM module launched in late summer of 2020 and is aimed at streamlining, among other things, the probationary

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report review process and allow the EDD to have greater oversight over timely completion of probationary reports for all of its employees. The PM will provide EDD managers and supervisors with advanced notice of upcoming probationary reports, along with reminder notifications prior to a probationary report's due date, as well as an overdue notification. Additionally, the PM allows for reporting capability for greater compliance and accountability for late or overdue probationary reports. See attachments #1 - #3 (EDD Administrator Email notice to EDD Employees of updates to the TMS).

The EDD's Human Resource Services Division (HRSD) provides managers and supervisors with training on completion of probationary reports, and will continue to educate over 1,200 managers and supervisors of the importance of timely completion of probationary reports to ensure the regulatory requirements are met and also maintain a successful and effective workforce to better serve the people of California. EDD is hopeful that through the TMS and continued education to Department managers and supervisors that EDD can ensure greater compliance with completion of employee's probationary reports.

Finding No. 4 – A Disability Advisory Committee has not been established

Cause: The EDD took steps to re-implement its Disability Advisory Committee (DAC) in 2019. The EDD recognizes the importance and impact of an active DAC and has made a commitment to ensure compliance going forward.

DAC experienced a large number of retirements and other types of attrition coupled with the retirement of an EEO Officer. A new EEO Officer was installed and DAC member recruitment completed. The first meeting of the DAC occurred on February 24, 2020 and quarterly meetings have been scheduled through the end of 2020.

In October 2019, the EDD announced the recruitment for the DAC. Nineteen EDD employees were accepted and DAC members. To ensure EDD's DAC is less vulnerable to attrition by retirement, staggered terms were implemented. Below are the dates of the meetings that have occurred (the next DAC meeting is scheduled to occur on December 3, 2020):

- February 24, 2020 (Kick-off Meeting)
- May 27, 2020
- August 26, 2020

Additionally, the EDD announced another DAC recruitment for October 2020 as part of its staggered term strategy. The EDD Scene Newsletter featured an article on the

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DAC in order to educate EDD employees about the purpose and benefits of having an active DAC.

Finding No. 6 – Ethics training was not provided for all filers

Cause: EDD launched the Learning Management System (LMS) of the TMS in January 2020 to assist with the tracking, and notification of employee mandatory training. Trainings are dynamically pushed to all new employees at the time of hire and reminder emails are now sent to the employee, with escalation emails sent to branch Training Coordinators and the employee's manager. Conflict of interest (COI) filers are added to the COI Database and updated in the LMS for ethics training on a monthly basis for those appointed the prior month.

During the transition from our previous system to our new LMS, appointment dates for many employees were transferred incorrectly. As a result, the data EDD provided during the audit period was unknowingly incorrect. EDD has since corrected the data and found there are a total of eight filers that had taken the training within 6 months of their due date. Six filers were more than six months past their due date. Forty one filers were now found to be in compliance as many had appointment dates after the audit period, and training was taken within six months of that appointment date.

Finding No. 7 – Supervisory training was not provided for all supervisors, managers and CEAs

Cause:

Manager Training:

Eight of the ten managers were previously Systems Software Specialists and considered Supervisory, but were re-allocated in the Information Technology (IT) class consolidation to IT Managers I, which were managerial. Since the job had not changed, EDD was unaware at first that they were now required to take managerial training. Once EDD realized the need, we began scheduling these managers for training and continue to work towards full compliance (two were scheduled for training in April with CalHR but were delayed due to COVID).

We continue to work with one of the managers for scheduling in Southern California (CalHR classes have moved to a virtual format during the pandemic, so this manager will be registered).

The final manager took her class within three months of her due date due to workload and scheduling with CalHR.

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CEA Training:

The CEA noted in the finding had a certificate date of 2 weeks past the due date. Training would was completed during the correct time frame, but the certificate was submitted after the training was completed.

Continual Leadership Training:

Biennial training was completed during the designated timeframe, but the certificate of completion was entered after the due date. Managers and supervisors track their training throughout the year and are required to enter the total hours by June 30th each year. These two managers were late in submitting their hours, but the training was completed during the correct timeframe.

Finding No. 8 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: EDD did provide sexual harassment prevention training to all supervisors through an outside vendor who would notify employees by email. Escalation of out of compliance employees were tracked manually with excel spreadsheets.

EDD was implementing the LMS and going through data validation during the time of the audit when the reports were pulled. During data validation, it was discovered that some of the files uploaded to the system had errors in them and were corrected. Seventeen of the original noncompliance records were actually in compliance once the data was corrected.

Of the remaining 38 records:

- 9 were either on a Leave of Absence during the audit period or were not employed at EDD during the audit period.
- 2 were not appointed to supervisory positions during the audit period
- 15 took the required training within 90 days of the due date
- 12 were overdue by more than 90 days

Finding No. 10 – Alternate range movements did not comply with civil service laws, board rules, and/or CalHR Policies and guidelines

Cause: The incumbent was moved to Range C effective February 15, 2019. The anniversary date set for this transaction was February 2020 since it was a “qualifying pay period” (11 days). However, being at the highest range, the next increase would have been a Merit Salary Adjustment not to occur before 12 months, therefore, the effective date should have been March 2020. The transaction was corrected and the discrepancy clarified as part of training on determining anniversary dates

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Finding No. 11 – Incorrect Authorization of Bilingual Pay

Cause: The EDD acknowledges the requirement that all necessary documentation is on file for its employees justifying and supporting the need for bilingual pay. The EDD will be providing additional training to its Personnel Liaisons to ensure requests for hire include all of the necessary documentation to support requesting bilingual pay for a position. EDD will also be providing additional training to its HRSD staff to ensure review of all bilingual position requests meet the minimum contact requirement for supporting a bilingual position, and ensuring that the appropriate approvals are on all bilingual requests

Finding No. 12 – Incorrect authorization of pay differentials

Cause: The incorrect Recruitment and Retention Pay Differential code is referenced. The Earnings ID 8LG7 is the correct differential applicable to this employee.

The Educational Incentive Pay Differential is shown for the Supervising Criminal Investigator I and was incorrectly applied as it is shown for the higher levels of other classifications but not EDD. EDD has corrected the transactions and removed the pay differentials.

Finding No. 13 – Incorrect Authorization of Out of Class Pay

Cause: One error was caused by a miscalculation of the daily rate. EDD corrected this error and the adjustment was issued on February 25, 2019. One error was caused by a miscalculation of the out-of-class salary.

Salary Determinations are now processed by a Senior Personnel Specialist with expert knowledge in the area of compensation. The EDD will also add an additional step to review salary determinations of all employees on an out-of-class assignment when there is a general salary increase.

Finding No. 14 – Department did not properly monitor time worked for all positive pay employees

Cause: The Department's Enterprise Time-Reporting (ETR) system will encompass a component to track the intermittent hours and provide an alert when employees are nearing the limit. Until such time that this phase of ETR is complete, monthly reports will be generated from the State Controller's Office Management Information Report System, providing the same cumulative totals for intermittent employees.

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Finding No. 16 – Department has not implemented a monthly internal audit process to verify all leave input is keyed accurately and timely

Cause: The Department functions with designated timekeepers (Attendance Clerks) as liaisons between the employee and the Personnel Specialists. HRSD does not receive timesheets for the 7,000 plus employees and, therefore, the Time & Attendance Report (Std 672) is the source of information entered into the Leave Accounting System (LAS). Due to the vast number of employees, it is not feasible to audit LAS against the Std 672 and timesheet.

Prior to the interruption by COVID-19, the Department began partnership with the State Controller's Office to form methodology that allows a direct interface of timesheet information into LAS using scripts from the Enterprise Time-Reporting (ETR) system, developed by EDD in 2019. This component will offer the assurance that employee time and leave information are correctly uploaded in LAS.

Finding No. 20 – Performance appraisals were not provided to all employees

Cause: The EDD acknowledges the critical role that performance appraisals play in ensuring a successful workforce. The EDD is a Department of over 7,000 employees, with some on probation and others off probation. The EDD has previously relied on a manual system to notify Department managers and supervisors of upcoming performance appraisals, and manually tracking compliance with our regulatory requirement of having a performance evaluation on every employee completed at least once annually.

The EDD's TMS will allow EDD to have greater oversight and ensure greater compliance with many of its training and performance management regulatory requirements. The PM module launched in late summer of 2020, and is aimed at streamlining, among other things, the performance appraisal review process and allow the EDD to have greater oversight over timely completion of performance appraisal reports for all of its employees. The PM will provide EDD managers and supervisors with advanced notice of upcoming performance appraisal reports, along with reminder notifications prior to a performance appraisal reports due date, as well as an overdue notification. Additionally, the PM allows for reporting capability for greater compliance and accountability for late or overdue performance appraisal reports. See attachment 9 (EDD Administrator Email notice to EDD Employees of updates to the TMS).

Additionally, the EDD's Human Resource Services Division (HRSD) provides managers and supervisors with training on completion of performance appraisal reports, and will continue to educate over 1,200 managers and supervisors of the

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importance of timely completion of probationary reports to ensure regulatory requirements are met and also maintain a successful and effective workforce to better serve the people of California. EDD is hopeful that through the TMS and continued education to our Department managers and supervisors that EDD can ensure greater compliance with completion of our employee's performance appraisal reports.

Thank you for the opportunity to respond to the draft audit findings. If you have any questions or need additional information, please contact Alicia Leisenring at (916) 653-8456 or Alicia.Leisenring@edd.ca.gov.

JILL O'CONNELL

Chief, Human Resource Services Division

Attachments:

1. CalHR 272 – Response
2. 2019 DAC Recruitment Announcement
3. DAC Member Roster
4. February 24, 2020 DAC Meeting Agenda and Minutes
5. May 27, 2020 DAC Meeting Agenda and Minutes
6. August 26, 2020 DAC Meeting Agenda and Minutes
7. 2020 DAC Recruitment Announcement
8. The Scene 2020 – Second Quarter Issue
9. EDD Administrator Email notice to Employees