



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA GAMBLING CONTROL COMMISSION**

Compliance Review Unit  
State Personnel Board  
November 29, 2021

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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 California Gambling Control Commission (CGCC) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

| Area                         | Severity      | Finding  |
|------------------------------|---------------|--|
| Examinations                 | In Compliance | Examinations Complied with Civil Service Laws and Board Rules  |
| Appointments                 | In Compliance | Appointments Complied with Civil Service Laws and Board Rules  |
| Equal Employment Opportunity | In Compliance | Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules                                  |
| Personal Services Contracts  | Serious       | Written Justification Was Not Provided for All Personal Services Contracts   |
| Personal Services Contracts  | Serious       | Unions Were Not Notified of Personal Services Contracts  |
| Mandated Training            | Very Serious  | Ethics Training Was Not Provided for All Filers  |
| Compensation and Pay         | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines                     |
| Leave                        | In Compliance | Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Leave                        | In Compliance | Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies                |
| Leave                        | In Compliance | Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines         |

| Area   | Severity      | Finding   |
|--------|---------------|---|
| Policy | In Compliance | Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines               |
| Policy | In Compliance | Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | Serious       | Performance Appraisals Were Not Provided to All Employees <sup>1</sup>  |

### **BACKGROUND**

The focus of the CGCC is to act as the regulatory body over:

1. Gambling establishments (cardrooms), and over all persons or transactions regarding ownership interest of gambling enterprises;
2. Third Party Providers of Proposition Players Services, and over all persons or transactions regarding ownership interest; and,
3. Tribal casinos, pursuant to the CGCC's authority under the Tribal-State Gaming Compacts.

The CGCC is responsible for setting policy; establishing regulations; making determinations of suitability for gaming employees and other individuals and entities; issuing licenses; acting as the administrator of gaming revenues deposited into the Indian Gaming Special Distribution Fund and the trustee over the revenues deposited into the Indian Gaming Revenue Sharing Trust Fund; and, administering the provisions of the Gambling Control Act and the Tribal-State Gaming Compacts.

The CGCC employs 35 employees; and its vision is to advance California as a national leader in gambling regulation while achieving strong public trust. The CGCC's mission is to protect the public by ensuring integrity and justice in the controlled gambling industry through effective regulations and fair application of the law.

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<sup>1</sup> Repeat finding. December 18, 2018, the CGCC's Compliance Review Report identified 3 of 11 permanent employees who were missing annual performance appraisals.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CGCC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if the CGCC'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 CGCC'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 CGCC provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CGCC did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CGCC'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 CGCC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CGCC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CGCC did not make any additional appointments during the compliance review period.

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

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

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<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The CGCC's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CGCC's justifications for the contracts were legally sufficient. The review was limited to whether the CGCC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CGCC'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 CGCC's Leave Activity and Correction Certification forms to verify that the CGCC 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 CGCC'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 CGCC'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 CGCC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CGCC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements. During the compliance review period, the CGCC did not have any employees with non-qualifying pay period transactions.

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

On May 18, 2021, an exit conference was held with the CGCC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed

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<sup>3</sup> If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

the CGCC’s written response on June 18, 2021, 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, October 1, 2019, through September 8, 2020, the CGCC conducted two examinations. The CRU reviewed those two examinations, which are listed below:

| Classification   | Exam Type | Exam Components                                | Final File Date | No. of Apps |
|--|-----------|--|-----------------|-------------|
| Career Executive Assignment (CEA) A, Deputy Director, Legislation and Regulatory Affairs | CEA       | Statement of Qualifications (SOQ) <sup>4</sup> | 11/21/19        | 12          |

<sup>4</sup> 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.



| Classification                    | Exam Type | Exam Components | Final File Date | No. of Apps |
|-----------------------------------|-----------|-----------------|-----------------|-------------|
| CEA A, Deputy Director, Licensing | CEA       | SOQ             | 2/3/20          | 14          |

|                      |                      |  |
|----------------------|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING No. 1</b> | <b>EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b> |
|----------------------|----------------------|--|

The CRU reviewed two CEA examinations which the CGCC administered in order to create eligible lists from which to make appointments. The CGCC published and distributed examination bulletins containing the required information for all examinations. Applications received by the CGCC were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the CGCC conducted during the compliance review period.

### **Appointments**

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

During the period under review, October 1, 2019, through September 8, 2020, the CGCC made three appointments. The CRU reviewed one of those appointments, which is listed below:

| Classification           | Appointment Type | Tenure    | Time Base | No. of Appts. |
|--------------------------|------------------|-----------|-----------|---------------|
| Associate Budget Analyst | Transfer         | Permanent | Full Time | 1             |

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING No. 2 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b> |
|----------------------|--|

The CRU reviewed one appointment made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The CGCC verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointment that the CGCC initiated during the compliance review period. Accordingly, the CRU found that the CGCC’s appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

**Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department’s EEO program. (Gov. Code, § 19795, subd. (a).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like CGCC, the EEO Officer may be the Personnel Officer.

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

appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING No. 3 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM<br/>COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD<br/>RULES</b> |
|----------------------|--|

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CGCC’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the CGCC. The CGCC also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

### **Personal Services Contracts**

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

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

During the period under review, September 1, 2019, through August 31, 2020, the CGCC had one PSC that was in effect. The CRU reviewed the one contract, which is listed below:

| Vendor               | Services          | Contract Dates    | Contract Amount | Justification Identified? | Union Notification? |
|----------------------|-------------------|-------------------|-----------------|---------------------------|---------------------|
| MGT Consulting Group | Cost/Fee Analysis | 7/22/19 – 6/30/20 | \$28,445        | No                        | No                  |

|                              |   |
|------------------------------|---|
| <b>SEVERITY:<br/>SERIOUS</b> | <b>FINDING No. 4 WRITTEN JUSTIFICATION WAS NOT PROVIDED FOR ALL PERSONAL SERVICES CONTRACTS</b> |
|------------------------------|---|

**Summary:** The CGCC did not prepare or retain written justification why the one contract reviewed satisfied Government Code section 19130, subdivision (b).

**Criteria:** Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60, subd. (a).) The agency shall maintain the written justification for the duration of the contract and any extensions of the contract or in accordance with the record retention requirements of section 26, whichever is longer. (Cal. Code Reg., tit. 2, § 547.60, subd. (b).)

**Severity:** Serious. Without specific written justification detailing why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not determine whether the department's PSC's complied with current procedural requirements.

**Cause:** The CGCC believed a sufficient justification was provided: the services (cost and fee analysis) contracted are not available within civil service.

**SPB reply:** The CGCC did not provide any basis for determining that the contracted services are not available within civil service.

**Corrective Action:** Within 90 days of the date of this report, the CGCC 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 19130, subdivision (b), and California Code of Regulations, title 2, section 547.60, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

|                                    |  |
|------------------------------------|--|
| <b>SEVERITY:</b><br><b>SERIOUS</b> | <b>FINDING No. 5 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b> |
|------------------------------------|--|

**Summary:** The CGCC did not notify unions prior to entering into the one contract reviewed.

**Criteria:** The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

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

**Cause:** The CGCC believed that the contract could not have been performed within civil service, as the services needed were highly technical and specialized.

**Corrective Action:** It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. The PSC’s reviewed during this compliance review involved 1) cost analyses of those activities which the CGCC is required to undertake in order to provide deliverables, and 2) develop a Gambling Control Fund fee structure; functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CGCC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## **Mandated Training**

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

Additionally, new supervisors must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CGCC’s mandated training program that was in effect during the compliance review period, September 1, 2018, through August 31, 2020. The CGCC’s sexual harassment prevention training was found to be in compliance, while the CGCC’s ethics training was found to be out of compliance.

|                                   |  |
|-----------------------------------|--|
| <b>SEVERITY:<br/>VERY SERIOUS</b> | <b>FINDING No. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b> |
|-----------------------------------|--|

**Summary:** The CGCC provided ethics training to all 22 of their existing filers. However, the CGCC did not provide ethics training to its one new filer within six months of their appointment.

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

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

**Cause:** Misunderstanding of the training requirements.

**Corrective Action:** Within 90 days of this report, the CGCC must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>5</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, October 1, 2019, through September 8, 2020, the CGCC made three appointments. The CRU reviewed one of those appointments to determine if the CGCC applied salary regulations accurately and correctly processed the employee's compensation, which is listed below:

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<sup>5</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan. (Cal. Code Regs., tit. 2, section 599.666).

| Classification           | Appointment Type | Tenure    | Time Base | Salary (Monthly Rate) |
|--------------------------|------------------|-----------|-----------|-----------------------|
| Associate Budget Analyst | Transfer         | Permanent | Full Time | \$6,261               |

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 7 SALARY DETERMINATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b> |
|----------------------|--|

The CRU found no deficiencies in the salary determination that was reviewed. The CGCC appropriately calculated and keyed the salaries for each appointment and correctly determined the employee’s anniversary date ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

**Leave**

**Positive Paid Employees**

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee’s time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>6</sup> worked and paid absences<sup>7</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

<sup>6</sup> For example, two hours or ten hours counts as one day.

<sup>7</sup> For example, vacation, sick leave, compensating time off, etc.



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 CGCC had three positive paid employees whose hours were tracked. The CRU reviewed those three positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification                      | Tenure            | Time Frame       | Time Worked |
|-------------------------------------|-------------------|------------------|-------------|
| Information Technology Associate    | Retired Annuitant | 7/1/19 – 6/30/20 | 889.5 hours |
| Information Technology Specialist I | Retired Annuitant | 7/1/19 – 6/30/20 | 742 hours   |
| Seasonal Clerk                      | Temporary         | 3/1/20 – 12/1/20 | 1,129 hours |

|                      |   |
|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING No. 8 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
|----------------------|---|

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CGCC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

### Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, June 1, 2019, through May 31, 2020, the CGCC placed one employee on ATO. The CRU reviewed the one ATO appointment to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

| Classification              | Time Frame          | Amount of Time on ATO |
|-----------------------------|---------------------|-----------------------|
| Career Executive Assignment | 10/31/19 – 11/19/19 | 20 days               |

|                      |   |
|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 9 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CGCC 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, March 1, 2020, through May 31, 2020, the CGCC reported 5 units comprised of 33 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

| Timesheet Leave Period | Unit Reviewed | Number of Employees | Number of Timesheets Reviewed | Number of Missing Timesheets |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| March 2020             | 200           | 5                   | 5                             | 0                            |
| March 2020             | 400           | 9                   | 9                             | 0                            |
| April 2020             | 200           | 5                   | 5                             | 0                            |
| April 2020             | 400           | 10                  | 10                            | 0                            |
| May 2020               | 200           | 5                   | 5                             | 0                            |
| May 2020               | 400           | 10                  | 10                            | 0                            |

|                      |  |
|----------------------|--|
| <b>IN COMPLIANCE</b> | <b>FINDING NO. 10 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
|----------------------|--|

The CRU reviewed employee leave records from three different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CGCC kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

**Policy and Processes**

Nepotism

It is the policy of the State of California to 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.)*

|                      |   |
|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING No. 11 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU verified that the policy was disseminated to all staff and emphasized the CGCC’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CGCC’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers’ Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers’ compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee’s “personal physician,” as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers’ compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers’ compensation coverage is not mandatory for volunteers as it is for employees. *(Ibid.)* This is specific to the legally uninsured state departments participating in the Master Agreement. *(Ibid.)* Departments with an insurance policy for workers’ compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. *(Ibid.)*

In this case, the CGCC did not employ volunteers during the compliance review period.

|                      |   |
|----------------------|---|
| <b>IN COMPLIANCE</b> | <b>FINDING No. 12 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b> |
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The CRU verified that the CGCC 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 CGCC 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 12 permanent CGCC 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 |
|--|---------------------------------|
| Associate Governmental Program Analyst | 10/31/2019                      |
| Associate Governmental Program Analyst | 6/1/2019                        |
| Associate Governmental Program Analyst | 10/12/2019                      |
| Associate Governmental Program Analyst | 6/30/2019                       |
| Attorney III                           | 7/14/2019                       |
| Information Technology Manager I       | 1/18/2019                       |
| Information Technology Specialist I    | 12/31/2019                      |
| Office Technician                      | 11/7/2019                       |
| Senior Legal Analyst                   | 5/31/2019                       |
| Staff Services Manager I               | 5/28/2019                       |
| Staff Services Manager I               | 10/31/2019                      |
| Staff Services Manager III             | 10/23/2019                      |

|                              |   |
|------------------------------|---|
| <b>SEVERITY:<br/>SERIOUS</b> | <b>FINDING No. 13 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b> |
|------------------------------|---|

**Summary:** The CGCC did not provide annual performance appraisals to 2 of 12 employees reviewed after the completion of the employee’s probationary period. This is the second consecutive time this has been a finding for the CGCC.

**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 CGCC believes this is an isolated incident because as both instances of non-compliance occurred under the same supervisor. This direct supervisor inappropriately put other workload ahead of the mandatory performance appraisals and has since been reminded of the importance of completing performance appraisals timely.

**Corrective Action:** Within 90 days of the date of this report, the CGCC 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 CGCC's response is attached as Attachment 1.

## **SPB REPLY**

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



GAMBLING CONTROL COMMISSION

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June 18, 2021

Suzy Ambrose, Executive Director  
State Personnel Board  
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**RESPONSE TO COMPLIANCE REVIEW REPORT – CALIFORNIA GAMBLING CONTROL COMMISSION**

The California Gambling Control Commission (Commission) has completed a review of the State Personnel Board's Compliance Review Report prepared by the State Personnel Board's Compliance Review Team. The Commission's responses to the findings are as follows:

**Finding: Written Justification Was Not Provided for All Personal Services Contracts**

**Cause:** The Commission believes a suitable justification was provided in the contract. Per Government Code GC 19130, Line (3) is the category that pertains to this justification/finding: *(3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.* The justification provided by the Commission in the contract stated "No other state agency offers the required services" which is a line taken directly from Government Code 19130.

In receiving additional information from the State Personnel Board's (SPB) Compliance Review Team (CRT) on this finding, the Commission will provide additional detail within our justifications on future contracts.

**Finding: Unions Were Not Notified of Personal Services Contracts**

**Cause:** The Commission believes notifying the union was not a requirement for this contract, as the contract could not have been performed by another state agency, as the services needed were highly technical and specialized. In receiving additional information from the SPB CRT on this finding, the Commission will ensure all appropriate organizations are notified should any future contracts require union notification.



### **Finding: Ethics Training Was Not Provided for All Filers**

**Cause:** The Commission had one employee who completed the mandated Ethics training after the deadline. The employee's start date was December 2019 and the training was completed in July 2020, one month after the deadline to complete the training. There was a misunderstanding that the employee still needed to complete the training since the employee was under the impression they were compliant with the course having received it from their previous position at their former agency within the prior two years. The Commission will work with the training coordinator and staff to ensure all employees complete all mandatory trainings within the required timeframes.

### **Finding: Performance Appraisals Were Not Provided to All Employees**

**Cause:** The Commission did not provide performance appraisals to two of the twelve employees at least once in each twelve calendar months after the completion of the employee's probationary period. The Commission's Human Resource (HR) Office makes a good faith effort to inform Commission supervisors and managers regarding the requirements of completing annual performance appraisals. Supervisors and managers are provided the due dates of upcoming performance appraisals of their employees at least two weeks prior to the upcoming due date. The Commission HR Office also sends reminders up to and after the due date (if necessary), as was done in the above finding.

The two instances of non-compliance within the twelve calendar month period were for employees supervised by the same supervisor. This was an isolated incident limited to one specific supervisor who inappropriately put other workload ahead of the required written performance appraisals. That supervisor has been spoken to regarding this matter and has been reminded of the importance of completing performance appraisals timely. The Commission's HR Office and executive management will continue to emphasize the importance of completing performance appraisals to all Commission supervisors and managers.

If you have any questions or would like to discuss the Commission responses further, please contact me at (916) 263-0904 or [Acarter@cgcc.ca.gov](mailto:Acarter@cgcc.ca.gov).



Alana Carter  
Deputy Director, Administration Division