



# **COMPLIANCE REVIEW REPORT**

## **OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

Compliance Review Unit  
State Personnel Board  
January 19, 2022

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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 Office of Statewide Health Planning and Development (OSHPD) 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	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Those That Were Provided Were Untimely <sup>1</sup>
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts <sup>2</sup>
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Repeat Finding. The March 28, 2019, OSHPD Compliance Review Report identified 4 missing probationary reports for 2 of 13 appointment files reviewed.

<sup>2</sup> Repeat Finding. The March 28, 2019, OSHPD Compliance Review Report identified six PSCs missing union notifications from the six PSCs reviewed.

Area	Severity	Finding
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Very Serious	Incorrectly Posted Leave Usage and/or Leave Credit
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Neptotism 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>3</sup>

### **BACKGROUND**

The OSHPD is the leader in collecting data and disseminating information about California's healthcare infrastructure. The OSHPD promotes an equitably distributed healthcare workforce, and publishes valuable information about healthcare outcomes.

<sup>3</sup> Repeat Finding. The March 28, 2019, OSHPD Compliance Review Report identified 52 missing performance appraisals from the 77 employees reviewed.

The OSHPD also monitors the construction, renovation, and seismic safety of hospitals and skilled nursing facilities; and, provides loan insurance to assist the capital needs of California's not-for-profit healthcare facilities. The OSHPD promotes and encourages communication, accountability, service, professionalism, integrity, respect, innovation, teamwork, and community as core values in support of our vision: "Access to safe, quality healthcare environments that meet California's dynamic and diverse needs."

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the OSHPD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>4</sup>. The primary objective of the review was to determine if the OSHPD'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 OSHPD'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 OSHPD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OSHPD did not conduct any permanent withhold actions during the compliance review period.

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

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

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<sup>4</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, monthly pay differentials, alternate range movements, and out-of-class assignments. During the compliance review period, the OSHPD did not issue red circle rate requests, arduous pay, or bilingual pay.

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

The OSHPD's PSC's were also reviewed.<sup>5</sup> It was beyond the scope of the compliance review to make conclusions as to whether the OSHPD's justifications for the contracts were legally sufficient. The review was limited to whether the OSHPD's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The OSHPD'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 Career Executive Assignments (CEAs) were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the OSHPD's Leave Activity and Correction Certification forms to verify that the OSHPD 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 OSHPD'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 OSHPD'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 OSHPD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of OSHPD positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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<sup>5</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.

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

The OSHPD declined to have an exit conference. The CRU received and carefully reviewed the OSHPD’s written response on December 13, 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, April 1, 2020, through December 31, 2020, the OSHPD conducted 18 examinations. The CRU reviewed 10 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA A, Deputy Division Chief, Facilities Development Division	CEA	Supplemental	12/24/20	8

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA B, Deputy Director	CEA	Supplemental	1/13/21	11
Compliance Officer, Health Facilities Construction	Departmental Open	Training and Experience (T&E) <sup>6</sup>	5/15/20	2
Compliance Officer, Health Facilities Construction	Departmental Open	T&E	9/16/20	1
Fire and Life Safety Officer, I, Health Facilities Construction	Departmental Open	T&E	6/15/20	7
Fire and Life Safety Officer, I, Health Facilities Construction	Departmental Open	T&E	10/31/20	9
Health Facility Construction, Associate Financing Analyst	Departmental Open	Education and Experience (E&E) <sup>7</sup>	6/15/20	1
Health Program Auditor III, Department of Health Services	Departmental Promotional	E&E	12/4/20	1
Regional Compliance Officer, Health Facilities Construction	Departmental Open	T&E	4/15/20	2
Supervisor, Health Facilities Review	Departmental Open	T&E	6/15/20	2

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed one departmental promotional, two CEA, and seven open examinations which the OSHPD administered in order to create eligible lists from which to make appointments. The OSHPD published and distributed examination bulletins containing the required information for all examinations. Applications received by the OSHPD 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

<sup>6</sup> The T&E examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

<sup>7</sup> In an E&E examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

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 OSHPD 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, April 1, 2020, through December 31, 2020, the OSHPD made 60 appointments. The CRU reviewed 23 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Career Executive Assignment (CEA) B, Deputy Director, Chief Information Officer	CEA	Permanent	Full Time	1
Accountant Trainee	Certification List	Permanent	Full time	1
Accounting Administrator II	Certification List	Permanent	Full time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full time	1
Associate Administrative Analyst – Accounting Systems	Certification List	Permanent	Full time	1
Auditor I	Certification List	Permanent	Full time	2
District Structural Engineer	Certification List	Permanent	Full time	1
Information Technology Associate	Certification List	Permanent	Full time	1
Information Technology Manager I	Certification List	Permanent	Full time	1

Classification	Appointment Type	Tenure	Time Base	No. of Apts.
Limited Examination and Appointment Program Candidate	Certification List	Permanent	Full time	1
Management Services Technician	Certification List	Permanent	Full time	1
Research Data Analyst I	Certification List	Permanent	Full time	2
Senior Health Facility Construction Financing Specialist	Certification List	Permanent	Full time	1
Staff Services Analyst (General)	Certification List	Permanent	Full time	2
Staff Services Manager I	Certification List	Permanent	Full time	1
Staff Services Manager II	Certification List	Permanent	Full time	1
Associate Personnel Analyst	Transfer	Permanent	Full time	1
Management Services Technician	Transfer	Permanent	Full time	1
Supervisor, Health Facilities Review	Transfer	Permanent	Full time	1
Information Technology Specialist II	Reinstatement	Intermittent	Intermittent	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND THOSE THAT WERE PROVIDED WERE UNTIMELY</b>
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**Summary:** The OSHPD did not provide 8 probationary reports of performance for 6 of the 23 appointments reviewed by the CRU. In addition, the OSHPD did not provide three probationary reports of performance in a timely manner, as reflected in the table below. This is the second consecutive time this has been a finding for OSHPD.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Accounting Administrator II	Certification List	1	1
Accounting Officer (Specialist)	Certification List	1	1
District Structural Engineer	Certification List	1	2
Information Technology Manager	Certification List	1	1
Staff Services Analyst	Certification List	2	1
Staff Services Manager I	Certification List	1	2

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Accountant Trainee	Certification List	1	1
Staff Services Analyst	Certification List	2	2

**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 OSHPD states that prior to 2018, they did not have a process for tracking and monitoring compliance with the requirements to provide probationary evaluations to employees.

**Corrective Action:** The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19172.

<b>SEVERITY: TECHNICAL</b>	<b>FINDING NO. 3 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME</b>
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**Summary:** The OSHPD failed to retain four NOPAs.

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

**Severity:** Technical. Without documentation, the CRU could not verify if the appointments were proper.

**Cause:** The OSHPD states that due to COVID stay at home orders and staff turnover, there were not appropriate procedures on file.

**Corrective Action:** The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26.

**Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing,

processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

<b>IN COMPLIANCE</b>	<b>FINDING NO. 4</b>	<b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES</b>
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the OSHPD'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 OSHPD. The OSHPD 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, April 1, 2020, through December 31, 2020, the OSHPD had 14 PSC's that were in effect. The CRU reviewed 10 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Advantage Total Protection	Alarm Monitoring Services	11/20-11/23	\$4,968	Yes	Yes
American College of Cardiology Foundation	Reporting Services	7/20-6/23	\$162,000	Yes	No
Cap City Web Services, LLC	IT Consulting	7/20-12/21	\$450,000	Yes	No
Eaton Interpreting Services	CART and ASL Translation	7/20-7/22	\$9,999	Yes	No
Kreait, LLC	Business Analysis Support	7/20-12/21	\$450,000	Yes	No
Magellan Health Services of CA	Employee Assistance Program Services	7/20-6/23	\$6,000	Yes	No
Public Consulting Group, LLC	Healthcare Project Coordination	11/20-11/21	\$250,000	Yes	Yes
Tallen, Inc.	Consulting	11/22-11/22	\$449,764	Yes	No

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
VSI Risk Management and Ergonomics, Inc.	Ergonomic Evaluations	7/20-6/22	\$249,999	Yes	Yes
West Publishing, Thompson Reuters	Legal Library Services	9/20-9/22	\$26,664	Yes	No

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 5 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>
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**Summary:** The OSHPD did not notify unions prior to entering into seven of the ten PSC's reviewed. This is the second consecutive time this has been a finding for OSHPD.

**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 OSPD states that there were training inconsistencies that led to irregular notification to the union.

**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 such as consulting and translation services, functions which various rank-and-file civil service classifications perform. The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with the requirements of Government Code section 19132.

## **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 OSHPD’s mandated training program that was in effect during the compliance review period, January 1, 2019, through December 31, 2020.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The OSHPD did not provide ethics training to 206 of 282 existing filers. In addition, the OSHPD did not provide ethics training to 33 of 49 new filers within 6 months of their appointment.

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

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

**Cause:** The OSHPD states that they did not have staff assigned as back up when the individual tracking and maintaining the records was called to serve on active military duty; therefore, employees who were out of compliance were not informed of their obligations until the employee called to active duty returned.

**Corrective Action:** The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 11146.3.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 7 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The OSHPD did not provide sexual harassment prevention training to 1 of 19 new supervisors within 6 months of their appointment. In addition, the OSHPD did not provide sexual harassment prevention training to 2 of 81 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, subds. (a) and (b); Gov. Code, § 19995.4.)

**Severity:** Very Serious. The department does not ensure that all new and existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

**Cause:** The OSHPD states that they were transitioning to a new learning management system which was not yet fully implemented to track and alert management of individuals who were out of compliance.

**Corrective Action:** The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to achieve compliance in accordance with Government Code section 12950.1.

## **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>8</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, April 1, 2020, through December 31, 2020, the OSHPD made 60 appointments. The CRU reviewed 23 of those appointments to determine if the OSHPD 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 (CEA) B, Deputy Director, Chief Information Officer	CEA	Permanent	Full Time	\$10,360
Accountant Trainee	Certification List	Permanent	Full Time	\$3,793

<sup>8</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)
Accounting Administrator II	Certification List	Permanent	Full Time	\$6,903
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,496
Associate Administrative Analyst – Accounting Systems	Certification List	Permanent	Full Time	\$5,910
Auditor I	Certification List	Permanent	Full Time	\$3,635
Auditor I	Certification List	Permanent	Full Time	\$3,635
District Structural Engineer	Certification List	Permanent	Full Time	\$12,080
Information Technology Associate	Certification List	Permanent	Full Time	\$5,064
Information Technology Manager I	Certification List	Permanent	Full Time	\$8,791
Limited Examination and Appointment Program Candidate	Certification List	Permanent	Full Time	\$3,144
Management Services Technician	Certification List	Permanent	Full Time	\$3,466
Research Data Analyst I	Certification List	Permanent	Full Time	\$4,496
Research Data Analyst I	Certification List	Permanent	Full Time	\$4,496
Senior Health Facility Construction Financing Specialist	Certification List	Permanent	Full Time	\$6,809
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,281
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,281
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,576
Staff Services Manager II	Certification List	Permanent	Full Time	\$6,752
Associate Personnel Analyst	Transfer	Permanent	Full Time	\$5,433
Management Services Technician	Transfer	Permanent	Full Time	\$3,305
Information Technology Specialist II	Reinstatement	Intermittent	Intermittent	\$9,731
Supervisor, Health Facilities Review	Reinstatement	Permanent	Full Time	\$14,077

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 8 INCORRECT APPLICATIONS OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT</b>
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**Summary:** The CRU found the following errors in the OSHPD’s determination of employee compensation:

Classification	Description of Finding	Criteria
Information Technology Manager I	Incorrect salary determination resulting in the employee being undercompensated.	Cal. Code Regs. § 599.675

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

**Severity:** Very Serious. In one circumstance, the OSHPD failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

**Cause:** The OSHPD states that the incorrect salary determination was a result of an employee not rechecking an employee’s current salary right before appointment. In addition, the salary determination worksheet was not reviewed by a supervisor in a timely manner.

**Corrective Action:** The OSHPD must establish an audit system to correct current compensation transactions as well as future transactions. The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure that its employees are compensated appropriately.

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, April 1, 2020, through December 31, 2020, the OSHPD employees made four alternate range movements within a classification. The CRU reviewed all of those alternate range movements to determine if the OSHPD 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)
Information Technology Associate	B	C	Full Time	\$5,738
Personnel Specialist	B	C	Full Time	\$4,119
Staff Services Analyst (General)	B	C	Full Time	\$4,692
Staff Services Analyst (General)	B	C	Full Time	\$4,281

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the OSHPD made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department’s program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such

experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>9</sup> (Gov. Code, § 19836, subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, an employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, April 1, 2020, through December 31, 2020, the OSHPD authorized two HAM requests. The CRU reviewed all of those authorized HAM requests to determine if the OSHPD correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

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<sup>9</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Senior Architect	Certification List	New to State	\$9,766- \$12,223	\$12,223
Senior Structural Engineer	Certification List	New to State	\$10,220 - \$12,789	\$11,505

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

### Pay Differentials

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

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, April 1, 2020, through December 31, 2020, the OSHPD

issued pay differentials<sup>10</sup> to 100 employees. The CRU reviewed 41 of those pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Associate Health Facility Construction Financing Analyst	Health Facility Construction Financing Recruitment and Retention	5%
Associate Health Construction Facility Financing Analyst	Health Facility Construction Financing Recruitment and Retention	5%
Compliance Officer, Health Facilities Construction	Longevity	3%
District Structural Engineer	Recruitment and Retention	\$300
District Structural Engineer	Recruitment and Retention	\$300
District Structural Engineer	Recruitment and Retention	\$300
Fire and Life Safety Officer, I (Health Facilities Construction)	Longevity	2%
Fire and Life Safety Officer II (Health Facilities Construction)	Longevity	2%
Fire and Life Safety Officer II (Health Facilities Construction)	Longevity	2%
Fire and Life Safety Officer II (Health Facilities Construction)	Longevity	3%
Health Facility Construction Financing Specialist	Health Facility Construction Financing Recruitment and Retention	5%
Principal Structural Engineer	Recruitment and Retention	\$300
Regional Compliance Officer, Health Facilities Construction	Longevity	3%
Research Scientist II (Epidemiology/Biostatistics)	Educational	2%
Research Scientist III (Epidemiology/Biostatistics)	Educational	2%
Research Scientist III (Epidemiology/Biostatistics)	Educational	2%
Research Scientist III (Epidemiology/Biostatistics)	Educational	2%

<sup>10</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Research Scientist Manger (Epidemiology/Biostatistics)	Educational	3%
Research Scientist Supervisor (Epidemiology/Biostatistics)	Educational	2%
Research Scientist Supervisor II (Epidemiology/Biostatistics)	Educational	3%
Research Scientist Supervisor II (Epidemiology/Biostatistics)	Educational	3%
Senior Architect	Geographic Recruitment and Retention	\$250
Senior Electrical Engineer	Recruitment and Retention	\$300
Senior Health Facility Construction Financing Specialist	Recruitment and Retention	5%
Senior Health Facility Construction Financing Specialist	Recruitment and Retention	5%
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Recruitment and Retention	\$300
Senior Structural Engineer	Longevity	2%
Supervisor, Health Facilities Review	Recruitment and Retention	\$300
Supervisor, Health Facilities Review	Recruitment and Retention	\$300
Supervisor, Health Facilities Review	Recruitment and Retention	\$300
Supervisor, Health Facilities Review	Recruitment and Retention	\$300
Supervisor, Health Facilities Review	Longevity	3%
Supervisor, Health Facilities Review	Longevity	3%

<b>IN COMPLIANCE</b>	<b>FINDING NO. 11</b>	<b>PAY DIFFERENTIAL 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 pay differentials that the OSHPD authorized during the compliance review period. Pay differentials were issues correctly in recognition of

unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded<sup>11</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

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

During the period under review, April 1, 2020, through December 31, 2020, the OSHPD issued OOC pay to two employees. The CRU reviewed both of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Information Technology Manager I	R09	CEA	1/1/20 – 12/31/20
Senior Structural Engineer	M01	Supervisor, Health Facilities Review	6/1/20 – 9/28/20

<sup>11</sup> “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

IN COMPLIANCE	FINDING NO. 12	OUT OF CLASS PAY AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the OOC pay assignments that the OSHPD authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

## Leave

### Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used 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>12</sup> worked and paid absences<sup>13</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.*)

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).)

<sup>12</sup> For example, two hours or ten hours count as one day.

<sup>13</sup> For example, vacation, sick leave, compensating time off, etc.

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year. Further, exceptions, under certain circumstances, may be made to the 1,500 hour limitation, as long as the appointing power follows the process outlined in the Personnel Management Policy and Procedures Manual, section 333.

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

Classification	Tenure	Time Frame	Time Worked
Fire and Life Safety Officer II (Health Facilities Construction)	Retired Annuitant	Intermittent	933 hours
Information Technology Specialist II	Retired Annuitant	Intermittent	957.12 hours
Senior Mechanical Engineer	Retired Annuitant	Intermittent	835 hours
Senior Structural Engineer	Retired Annuitant	Intermittent	445 hours
Student Assistant	Temporary	Temporary	1,500 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 13</b>	<b>POSITIVE PAID EMPLOYEES' TRACKED HOURS 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 positive paid employees reviewed during the compliance review period. The OSHPD 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, October 1, 2019, through September 30, 2020, the OSHPD placed 26 employees on ATO. The CRU reviewed 15 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
Associate Governmental Program Analyst	6/1/2020 – 6/2/2020	16 hours
Associate Governmental Program Analyst	4/1/2020 – 6/3/2020	143 hours
Associate Governmental Program Analyst	4/15/2020 – 6/12/2020	160 hours
Attorney III	4/10/2020 – 12/18/2020	104 hours
Fire and Life Safety Officer II	6/1/2020 – 6/12/2020	80 hours
Information Technology Associate	5/11/2020 – 5/29/2020	80 hours
Information Technology Associate	10/16/2020 – 10/16/2020	4 hours
Information Technology Associate	10/9/2020 – 11/20/2020	15.5 hours
Program Technician II	3/30/2020 – 5/29/2020	431 hours
Research Data Specialist I	7/31/2020 – 8/20/2020	18.5 hours
Research Data Specialist II	4/27/2020 – 8/25/2020	232 hours
Research Data Specialist III	7/20/20 – 11/16/20	224 hours
Senior Architect	10/28/20	8 hours
Senior Health Facilities Construction Financing Specialist	8/19/20	8 hours
Senior Structural Engineer	6/1/20-6/5/20	44 hours

<b>IN COMPLIANCE</b>	<b>FINDING NO.</b> <b>14</b>	<b>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 OSHPD 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, July 1, 2020, through September 30, 2020, the OSHPD reported 27 units comprised of 433 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
July 2020	210	12	12	0
July 2020	402	25	25	0
July 2020	530	20	20	0
August 2020	210	13	13	0
August 2020	400	15	15	0
August 2020	402	26	26	0
August 2020	420	15	15	0

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
September 2020	106	4	4	0
September 2020	402	25	25	0
September 2020	415	10	10	0
September 2020	420	14	14	0

<b>SEVERITY:</b> <b>VERY SERIOUS</b>	<b>FINDING NO.</b> <b>15</b>	<b>INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT</b>
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**Summary:** The OSHPD did not correctly enter 2 of 69 timesheets into the Leave Accounting System (LAS) during the August 2020 pay period, and 1 of 53 timesheets during the September 2020 pay period. As a result, three employees retained their prior leave balance despite having used leave credits.

**Criteria:** Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) 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.*)

**Severity:** Very serious. Errors in posting leave usage and/or leave credits puts the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

**Cause:** The OSHPD states that during the selected review period it was understaffed and did not have adequate resources to implement an internal review process due to recent turnover of key positions in the Transaction Unit.

**Corrective Action:** The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Human Resources Manual Section 2101. 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.<sup>14</sup> (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 employees<sup>15</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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<sup>14</sup> Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 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.

<sup>15</sup> As identified in Government Code sections 19858.3, subdivisions (a), (b), or (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

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, April 1, 2020, through December 31, 2020, the OSHPD had one employee with non-qualifying pay period transactions. The CRU reviewed the transaction 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 Pay Period	Full time	1

<b>IN COMPLIANCE</b>	<b>FINDING NO. 16</b>	<b>SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the OSHPD ensured the employee with a non-qualifying pay period 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.*)

<b>IN COMPLIANCE</b>	<b>FINDING NO.</b> <b>17</b>	<b>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 OSHPD’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the OSHPD’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.*)

<b>IN COMPLIANCE</b>	<b>FINDING NO.</b> <b>18</b>	<b>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 OSHPD 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 OSHPD 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 75 permanent OSHPD 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
Accounting Administrator I (Specialist)	9/12/20
Accounting Administrator I (Supervisor)	4/21/20
Associate Administrative Analyst (Accounting Systems)	11/7/20
Associate Governmental Program Analyst	2/1/20
Associate Governmental Program Analyst	12/27/20
Associate Governmental Program Analyst	5/17/20
Associate Governmental Program Analyst	6/1/20
Associate Governmental Program Analyst	3/28/20
Attorney	11/1/20
Compliance Officer, Health Facilities Construction	1/17/20
Compliance Officer, Health Facilities Construction	8/30/20
Compliance Officer, Health Facilities Construction	7/31/20
Compliance Officer, Health Facilities Construction	7/29/20
District Structural Engineer	12/28/20
District Structural Engineer	6/27/20
Executive Assistant	8/15/20
Executive Secretary I	7/29/20
Fire & Life Safety Officer II (Health Facilities Construction)	2/28/20
Fire & Life Safety Officer II (Health Facilities Construction)	9/30/20
Fire & Life Safety Officer II (Health Facilities Construction)	9/1/20
Fire & Life Safety Officer II (Health Facilities Construction)	10/1/20

Classification	Date Performance Appraisals Due
Health Planning Specialist II	2/27/20
Health Program Audit Manager I, Dept. of Health Services	7/23/20
Health Program Auditor II, Dept. of Health Services	11/8/20
Health Program Auditor II, Dept. of Health Services	7/1/20
Health Program Auditor IV, Dept. of Health Services	9/1/20
Health Program Specialist I	9/15/20
Health Program Specialist II	8/27/20
Information Officer II	2/20/20
Information Technology Associate	10/17/20
Information Technology Associate	2/19/20
Information Technology Specialist I	7/15/20
Information Technology Specialist I	7/1/20
Information Technology Specialist I	2/6/20
Materials and Stores Specialist	2/28/20
Materials and Stores Specialist	10/16/20
Office Technician (General)	10/1/20
Office Technician (General)	5/1/20
Office Technician (Typing)	1/8/20
Program Technician II	1/5/20
Research Data Analyst II	9/3/20
Research Data Analyst II	5/1/20
Research Data Specialist I	11/16/20
Research Data Specialist II	5/18/20
Research Data Supervisor II	8/2/20
Research Scientist III (Epidemiology/Biostatistics)	9/15/20
Research Scientist Manager (Epidemiology/Biostatistics)	12/18/20
Research Scientist Supervisor II (Epidemiology/Biostatistics)	5/11/20
Senior Architect	12/31/20
Senior Mechanical Engineer	12/19/20
Senior Mechanical Engineer	6/1/20
Senior Mechanical Engineer	9/1/20
Senior Mechanical Engineer	5/18/20
Senior Structural Engineer	12/24/20
Senior Structural Engineer	6/20/20

Classification	Date Performance Appraisals Due
Senior Structural Engineer	12/27/20
Staff Services Analyst (General)	7/24/20
Staff Services Analyst (General)	5/6/20
Staff Services Analyst (General)	1/15/20
Staff Services Analyst (General)	5/1/20
Staff Services Analyst (General)	12/7/20
Staff Services Analyst (General)	10/1/20
Staff Services Manager I	9/10/20
Staff Services Manager I	6/20/20
Staff Services Manager I	6/23/20
Staff Services Manager I	7/5/20
Staff Services Manager II (Supervisory)	7/23/20
Staff Services Manager II (Supervisory)	8/1/20
Staff Services Manager II (Supervisory)	11/2/20
Staff Services Manager III	5/9/20
Staff Services Manager III	9/1/20
Structural Engineer	11/29/20
Supervisor, Health Facilities Review	9/26/20
Supervisor, Health Facilities Review	5/2/20

<b>SEVERITY:</b> <b>SERIOUS</b>	<b>FINDING NO.</b> <b>19</b>	<b>PERFORMANCE APPRAISALS WERE NOT PROVIDED TIMELY TO ALL EMPLOYEES</b>
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**Summary:** The OSHPD did not provide annual performance appraisals to 51 employees, and did not provide performance appraisals in a timely manner to 5 of 75 employees reviewed after the completion of the employee's probationary period. This is the second consecutive time this has been a finding for OSHPD.

**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 OSHPD states that the due date for 2020 performance appraisals was April 30, 2020, and was affected by the sudden stay at home order.

**Corrective Action:** The OSHPD provides it has taken steps to achieve compliance in this area. Within 90 days of the date of this report, the OSHPD must submit to the SPB written documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

### **DEPARTMENTAL RESPONSE**

The OSHPD's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the OSHPD written response, the OSHPD 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.



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December 13, 2021

State Personnel Board  
Policy and Compliance Review Division  
801 Capitol Mall  
Sacramento, CA 95814

This letter is in response to the California State Personnel Board's (SPBs) compliance review draft of the Office of Statewide Health Planning and Development, transitioning to the Department of Health Care Access and Information (Department), personnel practices. The SPB draft report provided eleven findings, an explanation of why they occurred, and details to summarize corrective action plans.

Specific Findings and Responses:

**Finding No. 2 - Probationary Evaluations Were Not Provided for All Appointments Reviewed**

Cause: The Department agrees with the finding that Probationary Evaluations were not provided for all appointments reviewed. Prior to 2018, OSHPD did not have a process for tracking and monitoring compliance with the requirements to provide probationary evaluations to employees serving a probationary period.

Response: The Department's Human Resources Services Section (HRSS) has implemented procedures to notify supervisors of employee's probationary report due dates within the first couple weeks of an employee's appointment to a position requiring a probationary period be served which includes an email to the supervisor stating the dates the probationary reports are due, and a calendar invite to the supervisor for approximately a week prior to the due date. In addition, HRSS has implemented a tracking log to monitor incoming probationary reports and an alert to notify supervisors when they are deficient in providing probationary reports for an appropriate employee. Data metrics will be provided to the Director's Office as well as Executive leadership on a regular basis that will inform them of the status of the probationary reports completed and outstanding for the Department. Copies of probationary reports are placed in an employee's Official Personnel File. In addition, the Department is providing mandatory Performance Evaluation training, which includes probationary reports, to all managerial and supervisory staff on September 22, 2021 and October 5, 2021.

**Finding No. 3 - Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

Cause: The Department agrees with the finding that appointment documentation was not kept for the appropriate amount of time for four Notices of Personnel Action (NOPA). Due to COVID stay at home orders and staff turnover, we found there were not appropriate procedures on file.

Response: The Department's HRSS has implemented procedures for providing staff their NOPAs electronically once received from the State Controller's Office (SCO), while simultaneously maintaining a copy in their Official Personnel File pending receipt of the signed NOPA.

**Finding No. 5 - Unions Were Not Notified of Personal Services Contract**

Cause: The Department agrees with the finding that unions were not notified prior to execution of a contract. The Department found that there were training inconsistencies that lead to irregular notification to the union.

Response: The Department has documented procedures to ensure unions are notified prior to execution and provided additional training.

**Finding No. 6 - Ethics Training Was Not Provided for All Filers**

Cause: The individual tracking and maintaining these records was called to serve on active military duty, the department did not have an individual assigned to back up or support these functions during this time and no communication with the employees who were out of compliance occurred until the employee called to active duty returned.

Response: The Department has implemented a thorough excel tracking mechanism for Ethics training completion, with future due dates automatically calculated based on the most recent training completion date. In addition, the responsibility for tracking the training has been redirected more appropriately to the Department's Training Officer.

**Finding No. 7 - Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

Cause: During the review period, the Department was transitioning over to a new LMS system and was not fully implemented to track and alert management and the Executive Office of individuals who were out of compliance.

Response: The Department has implemented a thorough excel tracking mechanism for Sexual Harassment Prevention training completion, with future due dates automatically calculated based on the most recent training completion date, as well as assigned and completed records maintained within the web-based platform the Department uses to provide training. In addition, the Department is actively working on automating the training within our Learning Management System, which will automatically assign the appropriate training upon an employee's hire, and automatically reassign the training every two years as required.

**Finding No. 8 - Incorrect Applications of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment**

Cause: This incorrect salary determination was a result of an employee not rechecking an employee's current salary right before appointment. In addition, the salary determination worksheet was not reviewed by a supervisor timely.

Response: This error was due to an employee receiving a Merit Salary Adjustment (MSA) the same pay period as a promotional appointment, and the new pay rate was determined utilizing the pre-MSA salary rate. The Department corrected this error in May 2021. Additionally, HRSS implemented a new salary determination process which includes ensuring the salary determination is based upon the most current pay rate, as well as implementing reviews by other staff members to prevent potential calculation errors.

**Finding No. 15 - Incorrectly Posted Leave Usage and/or Leave Credit**

Cause: During the selected review period the Department was understaffed and did not have adequate resources to implement an internal review process due to recent turnover within Transaction units' key positions.

Response: The Department corrected these errors in May 2021. Additionally, the Department has implemented an auditing process which includes payroll staff conducting monthly audits of the timesheets their peers keyed. With this process, we get two different people reviewing the timesheets and leave balances for each employee monthly.

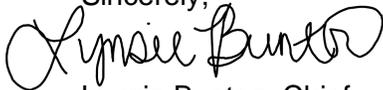
**Finding No. 19 - Performance Appraisals Were Not Provided to All Employees**

Cause: The Department agrees that performance appraisals were not provided to 51 of 75 employees at least once in each twelve calendar months after the completion of the employee's probationary period. The Department's due date for 2020, the year in question, was April 30, 2020, and was affected by the sudden stay at home order.

Response: The Department has updated its process to have two submissions dates per year to allow supervisors to split their staff's evaluation periods, making the Performance Appraisal process less cumbersome, giving supervisors ample time to complete meaningful Performance Appraisals. Data metrics will be provided to the Director's Office as well as Executive leadership on a regular basis that will inform them of the status of the performance evaluations completed and outstanding for the Department. In addition, the Department is providing mandatory Performance Evaluation training, which includes performance appraisals, to all managerial and supervisory staff on September 22, 2021 and October 5, 2021.

Thank you again for the opportunity to discuss and respond to the draft compliance review report. If you have any questions, please contact me at (916) 326-3262 or [Lynsie.Bunton@oshpd.ca.gov](mailto:Lynsie.Bunton@oshpd.ca.gov).

Sincerely,



Lynsie Bunton, Chief  
Human Resources Services Section  
Administrative Services Division

cc: Scott Christman, Chief Deputy Director  
Monica Erickson, Deputy Director, Administrative Ser