



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**

Compliance Review Unit  
State Personnel Board  
May 2, 2023

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## **INTRODUCTION**

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

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

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

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

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

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

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Department of Industrial Relations (DIR) 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
Examinations	In Compliance	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed <sup>1</sup>
Appointments	Technical	Department Did Not Provide Benefit Information in Accordance with Civil Service Law
Appointments	Technical	Appointment Documentation Was Not Kept for the Appropriate Amount of Time <sup>2</sup>
Appointments	In Compliance	Unlawful Appointment Investigation Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Equal Employment Opportunity	Very Serious	Complainant Was Not Notified of the Reason for Delay in Decision Within the Prescribed Time Period
Personal Services Contracts	Serious	Union Was Not Notified of Personal Services Contract <sup>3</sup>

<sup>1</sup> Repeat finding. The May 9, 2016, DIR Compliance Review Report identified 25 missing probation reports in 17 of the 81 appointments reviewed. The September 30, 2019, DIR Compliance Review Report identified 12 missing probation reports in 9 of the 43 appointment files reviewed.

<sup>2</sup> Repeat finding. The May 9, 2016, DIR Compliance Review Report identified 7 out of 81 NOPA's missing from the personnel files, and 10 out of 81 files reviewed were missing all but the hired applicant's application. The September 30, 2019, DIR Compliance Review Report identified 5 out of 43 NOPA's missing from the personnel files.

<sup>3</sup> Repeat finding. The September 30, 2019, DIR Compliance Review Report identified the DIR did not notify unions prior to entering into 10 of the 15 PSC's reviewed.

Area	Severity	Finding
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers <sup>4</sup>
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs <sup>5</sup>
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Employees <sup>6</sup>
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Alternate Range Movement Did Not Comply with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Hire Above the Minimum Request <sup>7</sup>
Compensation and Pay	Very Serious	Incorrect Authorization of Bilingual Pay
Compensation and Pay	Very Serious	Incorrect Authorization of Pay Differentials
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	Serious	Positive Paid Temporary Employees' Work Exceeded Time Limitations <sup>8</sup>
Leave	Serious	Administrative Time Off Was Not Properly Documented

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<sup>4</sup> Repeat finding. The May 9, 2016, DIR Compliance Review Report identified 30 of 82 existing filers did not receive ethics training and 10 of 20 new filers did not receive ethics training within 6 months of appointment. The September 30, 2019, DIR Compliance Review Report identified 921 of 1,287 existing filers did not receive ethics training and 468 of 525 new filers did not receive ethics training within 6 months of appointment.

<sup>5</sup> Repeat finding. The May 9, 2016, DIR Compliance Review Report identified 21 of 50 new supervisors did not receive basic supervisory training within 12 months of appointment. The September 30, 2019, DIR Compliance Review Report identified 5 of 79 new supervisors did not receive basic supervisory training within 12 months of appointment.

<sup>6</sup> Repeat finding. The May 9, 2016, DIR Compliance Review Report identified 19 of 82 existing supervisors did not receive sexual harassment prevention training every 2 years and 4 of 20 new supervisors did not receive the training within 6 months of appointment. The September 30, 2019, DIR Compliance Review Report identified 29 of 259 existing supervisors did not receive sexual harassment prevention training every 2 years and 27 of 96 new supervisors did not receive the training within 6 months of appointment.

<sup>7</sup> Repeat finding. The September 30, 2019, DIR Compliance Review Report identified 2 errors in the 2 HAM requests that were reviewed.

<sup>8</sup> Repeat finding. The September 30, 2019, DIR Compliance Review Report identified 1 out of 13 employees who worked over the 1500-hour limit in a 12-month consecutive period.

Area	Severity	Finding
Leave	Serious	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely <sup>9</sup>
Leave	Very Serious	Incorrect Application of State Service and Leave Transaction <sup>10</sup>
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees <sup>11</sup>

### **BACKGROUND**

The DIR protects and improves the health, safety, and economic well-being of over 18 million wage earners and helps their employers comply with state labor laws. The DIR was established in 1927 and is housed within the Labor & Workforce Development Agency. Its mission is to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California.

The DIR administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers. The DIR also publishes materials and holds workshops and seminars to promote healthy employment relations, conducts research to improve its programs, and coordinates with other agencies to target egregious violators of labor laws and tax laws in the underground economy. Furthermore, the DIR has approximately 3,614 positions in the following areas: Directorate (196), Administrative Support (392), Apprenticeship (94), Workplace Compensation (1,157), Labor Law (815), and Workplace Safety (960).

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<sup>9</sup> Repeat finding. The September 30, 2019, DIR Compliance Review Report identified the DIR did not implement a monthly internal audit process to verify timesheets were keyed accurately and timely.

<sup>10</sup> Repeat finding. The September 30, 2019, DIR Compliance Review Report identified 1 error in the 11 state service and leave transactions reviewed.

<sup>11</sup> Repeat finding. The September 30, 2019, DIR Compliance Review Report identified all 16 employees reviewed did not receive annual performance appraisals.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the DIR's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>12</sup>. The primary objective of the review was to determine if the DIR'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 DIR'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 DIR provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the DIR's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the DIR'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 DIR 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 CRU also reviewed the DIR's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations.

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

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<sup>12</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

The review of the DIR'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 DIR's PSC's were also reviewed.<sup>13</sup> It was beyond the scope of the compliance review to make conclusions as to whether the DIR's justifications for the contracts were legally sufficient. The review was limited to whether the DIR's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DIR's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, that all supervisors, managers, and those in Career Executive Assignments (CEA) were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the DIR's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the DIR's units to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the DIR'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 DIR employees who used Administrative Time Off (ATO) to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of DIR positive paid employees whose hours are tracked during the compliance review period to ensure that they adhered to procedural requirements.

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

On April 21, 2023, an exit conference was held with the DIR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed

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<sup>13</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 DIR's written response on April 18, 2023, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

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

During the period under review, October 1, 2021, through March 31, 2022, the DIR conducted eight examinations. The CRU reviewed seven of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA B, Assistant Deputy Chief, Enforcement	CEA	Statement of Qualifications (SOQ) <sup>14</sup>	10/22/21	6

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<sup>14</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 B, Deputy Chief, Division of Labor Standard Enforcement	CEA	SOQ	1/21/22	4
Hearing Officer II	Open	SOQ	1/18/22	3
Hearing Reporter	Open	Training and Experience (T&E) <sup>15</sup>	12/16/21	3
Hearing Reporter	Open	T&E	3/17/22	20
Worker's Compensation Compliance Officer	Open	T&E	2/2/22	3
Workers' Compensation Judge II	Open	T&E	12/12/21	88

<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 two CEA and five open examinations which the DIR administered to create eligible lists from which to make appointments. The DIR published and distributed examination bulletins containing the required information for all examinations. Applications received by the DIR 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 DIR conducted during the compliance review period.

### Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond

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<sup>15</sup> The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, October 1, 2021, through March 31, 2022, the DIR conducted 21 permanent withhold actions. The CRU reviewed 13 of those permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Associate Governmental Program Analyst (AGPA)	9PB04	5/13/21	12/31/22	Failed to Meet Minimum Qualifications (MQ's)
Auditor I	0PB01	10/16/21	11/23/21	Failed to Meet MQ's
Deputy Labor Commissioner (DLC) I	8PB17	6/3/21	3/17/22	Failed to Meet MQ's
DLC I	8PB17	9/17/21	12/15/21	Failed to Meet MQ's
DLC II	8PB18	10/18/21	3/30/22	Failed to Meet MQ's
DLC III	8PB19	2/17/22	3/23/22	Failed to Meet MQ's
Industrial Relations Representative	8PB16	2/7/21	10/18/21	Failed to Meet MQ's
Information Technology Associate	7PB33	12/20/21	1/18/22	Failed to Meet MQ's
Management Services Technician (MST)	4PB42	9/14/21	11/5/21	Failed to Meet MQ's
MST	4PB42	2/10/21	5/2/22	Failed to Meet MQ's
Office Technician (OT) (Typing)	4PB2402	9/1/21	3/30/22	Failed to Meet MQ's
Research Data Specialist III	8PB41	1/3/22	1/21/22	Failed to Meet MQ's

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Candidate Placed on Withhold
Workers' Compensation Consultant	0PBEG	5/27/21	1/10/22	Failed to Meet MQ's

<b>IN COMPLIANCE</b>	<b>FINDING NO. 2 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU found no deficiencies in the permanent withhold actions undertaken by the department 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, 2021, through September 30, 2021, the DIR made 370 appointments. The CRU reviewed 84 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Business Management Analyst	Certification List	Permanent	Full Time	2
AGPA	Certification List	Permanent	Full Time	2
Associate Safety Engineer	Certification List	Permanent	Full Time	5
Attorney III	Certification List	Permanent	Full Time	3
Attorney IV	Certification List	Permanent	Full Time	1
Auditor I	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
DLC I	Certification List	Permanent	Full Time	6
DLC II	Certification List	Permanent	Full Time	1
DLC III	Certification List	Permanent	Full Time	1
DLC IV	Certification List	Permanent	Full Time	1
Industrial Relations Representative	Certification List	Permanent	Full Time	4
Legal Secretary	Certification List	Permanent	Full Time	1
Legal Support Supervisor II	Certification List	Permanent	Full Time	1
MST	Certification List	Permanent	Full Time	1
Office Assistant (General)	Certification List	Permanent	Full Time	2
OT (Typing)	Certification List	Permanent	Full Time	3
Regional Manager	Certification List	Permanent	Full Time	1
Senior Legal Typist	Certification List	Permanent	Full Time	2
Staff Services Analyst (General)	Certification List	Permanent	Full Time	3
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Certification List	Permanent	Full Time	1
Workers' Compensation Assistant	Certification List	Permanent	Full Time	2
Workers' Compensation Consultant	Certification List	Permanent	Full Time	4
Workers' Compensation Judge I	Certification List	Permanent	Full Time	3
Workers' Compensation Manager	Certification List	Permanent	Full Time	1
OT (General)	LEAP	Limited Term	Full Time	1
AGPA	Permissive Reinstatement	Permanent	Full Time	1
Associate Management Auditor	Permissive Reinstatement	Permanent	Full Time	1
MST	Permissive Reinstatement	Permanent	Full Time	2
OT (Typing)	Permissive Reinstatement	Permanent	Full Time	3
SSA (General)	Permissive Reinstatement	Permanent	Full Time	1
Workers' Compensation Consultant	Permissive Reinstatement	Permanent	Full Time	1
Attorney IV	Promotion	Permanent	Full Time	1
AGPA	Transfer	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Management Auditor	Transfer	Permanent	Full Time	1
DLC I	Transfer	Permanent	Full Time	1
Industrial Relations Representative	Transfer	Permanent	Full Time	1
MST	Transfer	Permanent	Full Time	2
OT (Typing)	Transfer	Permanent	Full Time	5
Personnel Specialist	Transfer	Permanent	Full Time	2
SSA (General)	Transfer	Permanent	Full Time	1
Staff Services Manager I	Transfer	Permanent	Full Time	1
Workers' Compensation Assistant	Transfer	Permanent	Full Time	1
Workers' Compensation Consultant	Transfer	Permanent	Full Time	2
Workers' Compensation Judge I	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 3 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The DIR did not provide 13 probationary reports of performance for 11 of the 84 appointments reviewed by the CRU, as reflected in the table below. This is the third consecutive time this has been a finding for the DIR.

Classification	Appointment Type	Number of Appointments	Total # of Missing Probation Reports
Office Assistant (General)	Certification List	1	1
Senior Legal Typist	Certification List	1	2
SSA (General)	Certification List	1	1
Staff Services Manager II (Supervisory)	Certification List	1	1
Workers' Compensation Judge I	Certification List	1	1
AGPA	Transfer	2	3
DLC I	Transfer	1	1
OT (Typing)	Transfer	1	1
Personnel Specialist	Transfer	1	1

Classification	Appointment Type	Number of Appointments	Total # of Missing Probation Reports
Workers' Compensation Consultant	Transfer	1	1

**Criteria:** The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** Although supervisors were notified of the requirement to complete probationary reports, reports were not completed and the Human Resources Office (HRO) did not follow up.

**Corrective Action:** Within 90 days of the date of this report, the DIR 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 19172. Copies of relevant documentation

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

<b>SEVERITY: TECHNICAL</b>	<b>FINDING No. 4 DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION IN ACCORDANCE WITH CIVIL SERVICE LAW</b>
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**Summary:** The DIR did not provide explanation of benefits prior to acceptance of appointment for 2 out of 84 appointments reviewed by the CRU. Additionally, the DIR did not memorialize that the applicant received an explanation of benefits, prior to appointment, in a formal offer of employment 2 times out of the 84 appointments reviewed by the CRU.

**Criteria:** An appointing power, before offering employment to an applicant, shall provide the applicant, in writing, with an explanation of benefits that accompany state service. These documents shall include a summary of the applicable civil service position with salary ranges and steps within them, as well as information on benefits afforded by membership in the Public Employees' Retirement System and benefits and protections provided to public employees by the State Civil Service Act. (Gov. Code, § 19057.2.)

**Severity:** Technical. An applicant is entitled to have all of the information regarding benefits relating to their potential employment prior to deciding whether to accept or decline the appointment.

**Cause:** DIR acknowledges this finding; no cause provided.

**Corrective Action:** Within 90 days of the date of this report, the DIR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the explanation of benefits requirements of Government Code section 19057.2. Copies of relevant documentation (including a template letter) demonstrating that the corrective action has been implemented must be included with the corrective action response.



<b>SEVERITY: TECHNICAL</b>	<b>FINDING NO. 5 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME</b>
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**Summary:** Of the 84 appointments reviewed, the DIR did not retain 74 NOPAs. This is the third consecutive time this has been a finding for the DIR.

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

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

**Cause:** The DIR failed to ensure that all appointment documentation was filed accurately and timely in employee’s personnel files due to its high vacancy rate, transitioning to a telework environment, and physically relocating offices from Oakland to Sacramento.

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

Unlawful Appointment Investigations

Departments that entered into an Unlawful Appointment Investigation Delegation Agreement between their executive management and the CalHR have the authority to manage their own unlawful appointment investigations. The Delegation Agreement defines the reporting requirements, responsibilities, obligations, and expectations of the department in this process. The delegation agreement mandates that departments maintain up-to-date records on each unlawful appointment investigation including, at a minimum: the specific facts surrounding the appointment in question, a description of the circumstances which may have resulted in the unlawful appointment, copies of relevant

appointment documents, and any documentation which may demonstrate that the agency and employee acted in good faith when the appointment was offered and accepted. Departments must also maintain a tracking system to monitor its unlawful appointments.

During the period under review, October 1, 2021, through March 31, 2022, the DIR conducted one unlawful appointment investigation. The CRU reviewed the unlawful appointment investigation, which is listed below:

Classification	Date Investigation Initiated	Date Investigation Concluded
DLC II	7/16/20	10/25/21

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 UNLAWFUL APPOINTMENT INVESTIGATION COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The DIR’s unlawful appointment investigation was found to comply with the rules set forth in the signed Delegation Agreement with the CalHR.

**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>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 7    COMPLAINANT WAS NOT NOTIFIED OF THE REASON FOR DELAY IN DECISION WITHIN THE PRESCRIBED TIME PERIOD</b>
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**Summary:** The DIR provided evidence that 11 discrimination complaints related to a disability, medical condition, or denial of reasonable accommodation were filed during the compliance review period of July 1, 2021, through June 30, 2022. 1 of the 11 complaint investigations exceeded 90 days and the DIR failed to provide written communication to the complainant regarding the status of the complaint.

**Criteria:** The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

**Severity:** Very Serious. Employees were not informed of the reasons for delays in decisions for discrimination complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

**Cause:** Transition of workload resulted in the DIR missing the 90-day time limit to notify the complainant in writing of its delay in issuing its decision timely.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a).

### **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, October 1, 2021, through March 31, 2022, the DIR had 31 PSC’s that were in effect. The CRU reviewed 18 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Access Information	Container Storage Services	1/1/22 – 12/31/22	\$9,999	Yes	Yes
Banks Communication Corp	Cabling Services	10/1/21 – 6/30/22	\$2,571	Yes	Yes
California Reporting LLC	Court Reporting Services	2/16/22 – 2/16/23	\$40,000	Yes	Yes
Castillo Consulting PTRS LLC	Implicit Bias Training	1/1/22 – 12/31/22	\$50,000	Yes	No
Change Management Consult LLC	Online Medical Course Support	1/1/22 – 12/31/27	\$287,795	Yes	Yes
First Alarm	Alarm System Monitoring	3/1/22 – 9/30/23	\$1,100	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Greenway Solid Waste	Disposal Services	3/21/22 – 4/30/23	\$199,936	Yes	Yes
JAMS, Inc	Mediation Services	10/22/21 – 6/30/24	\$24,000	Yes	Yes
Keker, Van Nest & Peters LLP	Legal Services	3/14/22 – 6/30/23	\$124,850	Yes	Yes
LA Testing	Laboratory Support Services	10/12/21 – 10/9/23	\$190,000	Yes	Yes
National Date Stamp	Data Stamp Machine Repair	3/1/22 – 9/30/23	\$2,000	Yes	Yes
NCS Moving Services	Disposal Services	3/4/22 – 4/30/23	\$126,200	Yes	Yes
Northern California Court Reporters	Transcription Services	1/1/22 – 12/31/22	\$90,000	Yes	Yes
Paper Recycling & Shredding	Document Destruction	1/1/22 – 12/21/23	\$68,705	Yes	Yes
Providence Publications	Cal-OSHA Job Postings	11/20/21 – 6/30/22	\$5,000	Yes	Yes
Team Legal, Inc	Legal Services	12/15/21 – 12/14/22	\$9,999	Yes	Yes
Thomas Holm Legal	Legal Writing Training	12/15/21 – 12/14/22	\$37,500	Yes	Yes
Wage Justice Center	Legal Collection Services	2/1/19 – 1/31/23	\$1,421,000	Yes	Yes

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 8 UNION WAS NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS</b>
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**Summary:** The DIR did not notify the union prior to entering into 1 of the 18 PSC's reviewed. This is the second consecutive time this has been a finding for the DIR.

**Criteria:** Before a state agency executes a contract or amendment to a contract for personal services conditions specified within

Government Code section 19130, subdivision (b), the agency shall notify all organizations that represent state employees who perform or could perform the type of work that is called for within the contract, unless exempted under Government code section 19132, subdivision (b)(1). (Cal. Code Regs., tit. 2, § 547.60.2.)

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

**Cause:** The DIR acknowledges this finding. Inconsistencies were found in procurement file documentation and the use of internal checklists by contract unit staff.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Departments are responsible for notifying all organizations that represent state employees who perform or could perform the type of work to be contracted prior to executing a PSC. The PSCs reviewed during this compliance review involved several services and functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with the requirements of California Code of Regulations section 547.60.2.

### **Mandated Training**

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

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role

of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), and (b), & 19995.4, subd. (b).) Additionally, the training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).)

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

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

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

The CRU reviewed the DIR’s mandated training program that was in effect during the compliance review period, April 1, 2020, through March 31, 2022.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 9 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The DIR did not provide ethics training to 5 of 200 existing filers. In addition, the DIR did not provide ethics training to 16 of 79 new filers

within six months of their appointment. This is the third consecutive time this has been a finding for the DIR.

**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 DIR acknowledges this finding. Due to manual processes and insufficient procedures, ethics training was often not completed timely or documented correctly.

**Corrective Action:** Within 90 days of the date of this report, the DIR must submit to the SPB 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.10 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS</b>
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**Summary:** The DIR did not provide basic supervisory training to 1 of 38 new supervisors within 12 months of appointment; did not provide manager training to 4 of 6 new managers within 12 twelve months of appointment; and did not provide biennial leadership training to 207 of 238 existing supervisors, managers, and/or CEAs. This is the third consecutive time this has been a finding for the DIR.

**Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subds. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a



minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a CEA position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (e).)

**Severity:** Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

**Cause:** The DIR asserts that findings in the biennial leadership training were mostly due to the DIR having a different interpretation than the SPB and CalHR concerning Government Code section 19995.4 and CalHR Human Resources Manual section 2801. The DIR asserts it provided leadership training to all existing supervisors, managers, and CEAs timely based on each employee's specific biennial training period which commenced either after initial training or completing probation, not by the audit methodology of calendar years.

**SPB Reply:** The SPB disagrees with the DIR's interpretation of the law. Furthermore, as this is the third consecutive report where it has been identified that DIR is out of compliance in this area, the DIR should have been aware of the requirement as a result of prior technical assistance provided. The CRD has again provided technical assistance to DIR on this matter as a result of this audit.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure that new supervisors, managers, and CEAs are provided leadership and development training within twelve months of appointment, and that thereafter, they receive a minimum of 20 hours of leadership training biennially, as required by Government Code section 19995.4.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.11 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The DIR did not provide sexual harassment prevention training to 7 of 65 new supervisors within 6 months of their appointment. In addition, the DIR did not provide sexual harassment prevention training to 5 of 256 existing supervisors every 2 years. This is the third consecutive time this has been a finding for the DIR.

Furthermore, the DIR did not provide sexual harassment prevention training to 11 of 200 existing non-supervisors every 2 years.

**Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory employees one hour of sexual harassment prevention training every two years. New employees 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 employees 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 DIR states it recognizes the importance of sexual harassment prevention training. However, the DIR contracted with a vendor to provide training from 2019-2020 and did not renew the contract. When the contract expired the vendor did not turn over all of DIR’s employee records as requested so there were gaps in employee training records.

**SPB Reply:** At all times during the review period, the Civil Rights Department has offered this training at no cost to every employer in the state of California.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the

SPB documentation which demonstrates the corrections the department has implemented to ensure that all employees are provided sexual harassment prevention training 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>16</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, 2021, through September 30, 2021, the DIR made 370 appointments. The CRU reviewed 33 of those appointments to determine if the DIR applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Safety Engineer	Certification List	Permanent	Full Time	\$8,757
Associate Safety Engineer	Certification List	Permanent	Full Time	\$8,757
Attorney IV	Certification List	Permanent	Full Time	\$13,438
Attorney IV	Certification List	Permanent	Full Time	\$12,747
Auditor I	Certification List	Permanent	Full Time	\$4,191
DLC I	Certification List	Permanent	Full Time	\$5,658
DLC III	Certification List	Permanent	Full Time	\$8,320
Industrial Relations Representative	Certification List	Permanent	Full Time	\$4,893

<sup>16</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)
Legal Secretary	Certification List	Permanent	Full Time	\$4,675
MST	Certification List	Permanent	Full Time	\$4,132
Office Assistant (General)	Certification List	Permanent	Full Time	\$2,858
OT (Typing)	Certification List	Permanent	Full Time	\$3,287
OT (Typing)	Certification List	Permanent	Full Time	\$3,144
Regional Manager	Certification List	Permanent	Full Time	\$14,170
Senior Legal Typist	Certification List	Permanent	Full Time	\$4,236
SSA (General)	Certification List	Permanent	Full Time	\$4,476
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,403
Workers' Compensation Consultant	Certification List	Permanent	Full Time	\$5,676
Workers' Compensation Consultant	Certification List	Permanent	Full Time	\$5,934
Workers' Compensation Consultant	Certification List	Permanent	Full Time	\$5,934
AGPA	Permissive Reinstatement	Permanent	Full Time	\$6,178
Associate Management Auditor	Permissive Reinstatement	Permanent	Full Time	\$7,084
Workers' Compensation Consultant	Permissive Reinstatement	Permanent	Full Time	\$7,109
AGPA	Transfer	Permanent	Full Time	\$5,961
DLC I	Transfer	Permanent	Full Time	\$5,367
Industrial Relations Representative	Transfer	Permanent	Full Time	\$4,935
MST	Transfer	Permanent	Full Time	\$4,320
MST	Transfer	Permanent	Full Time	\$3,801
OT (Typing)	Transfer	Permanent	Full Time	\$3,162
Workers' Compensation Assistant	Transfer	Permanent	Full Time	\$4,469
Workers' Compensation Consultant	Transfer	Permanent	Full Time	\$6,368
Workers' Compensation Consultant	Transfer	Permanent	Full Time	\$7,109
Workers' Compensation Judge I	Transfer	Permanent	Full Time	\$11,611

<b>IN COMPLIANCE</b>	<b>FINDING NO.12 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The DIR appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

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

During the period under review, April 1, 2021, through September 30, 2021, the DIR employees made four alternate range movements within a classification. The CRU reviewed the four alternate range movements to determine if the DIR 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)
Graduate Student Assistant	F	G	Intermittent	\$4,479
Legal Secretary	A	B	Full Time	\$4,098
Legal Secretary	A	B	Full Time	\$3,920
Personnel Specialist	C	D	Full Time	\$4,511

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.13 ALTERNATE RANGE MOVEMENT DID NOT COMPLY WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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**Summary:** The CRU found one error in the DIR's determination of employee compensation:

Classification	Description of Finding	Criteria
Graduate Student Assistant	The Department did not provide complete documentation that the employee met the requirements of the ARC.	ARC # 062

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

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

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

**Cause:** The DIR acknowledges this finding. No cause provided.

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

### Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state

employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>17</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

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<sup>17</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.

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, 2021, through September 30, 2021, the DIR authorized two HAM requests. The CRU reviewed the two authorized HAM requests to determine if the DIR correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney III	Certification List	Permanent	\$9,463 – \$12,140	\$10,900
Legal Secretary	Certification List	Permanent	\$3,555 – \$4,451	\$3,555

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.14 INCORRECT AUTHORIZATION OF HIRE ABOVE THE MINIMUM REQUEST</b>
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**Summary:** The CRU found one error in the DIR's processing of HAM requests. This is the second consecutive time this has been a finding for the DIR.

Classification	Description of Finding	Criteria
Legal Secretary	Department did not provide justification demonstrating extraordinary qualifications, candidate's application, nor the CalHR 684, 685 or 691 form. There is no evidence that the candidate was entitled to a HAM.	Pay Differential 141

**Criteria:** CalHR may authorize payment at any step above the minimum salary limit to classes or positions in order to meet recruiting problems, to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.)

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

**Cause:** The DIR acknowledges this finding. There was a failure to ensure that all appropriate documentation for HAMs was filed correctly and



promptly due to a high vacancy rate, transitioning to a telework environment during the Covid-19 pandemic and the physical relocation of offices from Oakland to Sacramento.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code, section 19836.

### Bilingual Pay

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

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

During the period under review, April 1, 2021, through September 30, 2021, the DIR issued bilingual pay to 169 employees. The CRU reviewed 50 of those bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Assistant Safety Engineer	R09	Full Time	1
AGPA	R01	Full Time	2
Associate Safety Engineer	R09	Full Time	10
Associate Safety Engineer (Pressure Vessels)	R09	Full Time	1
Attorney III	R02	Full Time	2
DLC I	R02	Full Time	9
DLC II	R02	Full Time	5

Classification	Bargaining Unit	Time Base	No. of Appts.
Industrial Relations Representative	R01	Full Time	3
Investigator	R07	Full Time	1
Legal Secretary	R04	Full Time	1
MST	R01	Full Time	7
Office Assistant (Typing)	R04	Full Time	1
Senior Legal Typist	R04	Full Time	2
Senior Safety Engineer (Industrial)	R09	Full Time	2
Workers' Compensation Consultant	R01	Full Time	3

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.15 INCORRECT AUTHORIZATION OF BILINGUAL PAY</b>
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**Summary:** The CRU found 12 errors in the DIR's authorizations of bilingual pay:

Classification	No. of Positions	Description of Findings	Criteria
Associate Safety Engineer	6	Department failed to supply supporting documentation demonstrating the need for bilingual services and that the employee has been tested and certified bilingual.	Pay Differential 14 & Government Code section 7296
Associate Safety Engineer (Pressure Vessels)	1		
DLC I	1		
DLC II	1		
Office Assistant (Typing)	1		
Workers' Compensation Consultant	1		
Investigator	1	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Pay Differential 14

**Criteria:** For any state agency, a "qualified" bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).)

An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on

a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

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

**Cause:** The DIR acknowledges this finding. During the review period, the DIR did not have a procedure in place for processing bilingual pay.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 7296, and/or Pay Differential 14.

### 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, 2021, through September 30, 2021, the DIR authorized 992 pay differentials.<sup>18</sup> The CRU reviewed 50 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	No. of Positions	Pay Differential	Monthly Amount
Area Manager, CAL/OSHA Consultation Service	1	433	5.5%
Assistant Safety Engineer	1	261	\$200
Associate Safety Engineer	2	433	2%
Associate Safety Engineer	1	261	\$200
Hearing Officer I	1	84	5%
Hearing Officer II	1	84	5%
Information Technology Associate	2	13	5%
Information Technology Specialist I	6	13	5%
Information Technology Supervisor II	1	13	5%
Investigator	1	245	7%
Legal Secretary	1	141	\$501.02
Legal Support Supervisor I	2	141	\$567.44
Legal Support Supervisor I	1	141	\$542.74
MST	1	441	\$250
Personnel Specialist	1	211	5%
Presiding Workers' Compensation Judge	1	84	5%
Senior Legal Typist	5	141	\$453.97
Senior Legal Typist	1	141	\$434.19
Senior Personnel Specialist	1	211	5%
Workers' Compensation Consultant	1	441	\$250
Workers' Compensation Judge I	18	84	5%

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING No.16 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS</b>
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**Summary:** The CRU found 19 errors in the DIR's 50 authorizations of pay differentials:

<sup>18</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	No. of Positions	Area	Description of Findings	Criteria
Associate Safety Engineer	1	Recruitment and Retention	The employee's classification not eligible to receive the five percent recruitment and retention pay. Employee was overcompensated.	Pay Differential 261
Hearing Officer I	1	National Judicial College	Department failed to supply documentation demonstrating the employee met the criteria for the pay differential.	Pay Differential 84
Hearing Officer II	1			
Presiding Workers' Compensation Judge	1			
Workers' Compensation Judge I	15			

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

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

**Cause:** The DIR acknowledges this finding. During the review period, the DIR did not have a centralized process in place for reviewing and processing pay differentials.

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

Pay Differentials 261 and 84 to ensure that employees are compensated correctly and that transactions are keyed accurately. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Out-of-Class Assignments and Pay

For excluded<sup>19</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, 2021, through September 30, 2021, the DIR issued OOC pay to four employees. The CRU reviewed the four 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
Assistant Safety Engineer	R09	Associate Safety Engineer	4/1/21 – 4/30/21

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<sup>19</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.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
DLC III	S02	Not Provided <sup>20</sup>	4/1/21 – 9/30/21
SSA (General)	R01	AGPA	/1/21 – 4/30/21
Staff Services Manager I	S01	Staff Services Manager II	4/1/21 – 7/31/21

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO.17 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY</b>
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**Summary:** The CRU found two errors in the DIR’s authorizations of OOC pay:

Classification	Out-of-Class Classification	Description of Findings	Criteria
DLC III	Not Provided <sup>21</sup>	Due to lack of documentation, it is unknown whether this OOC Pay was correctly authorized and/or appropriate.	Pay Differential 91
Staff Services Manager I	Staff Services Manager II	The employee’s OOC pay was not recalculated after the 7/1/21 GEN and therefore the employee was undercompensated.	Pay Differential 101

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

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working

<sup>20</sup> Despite multiple requests, the DIR did not provide documentation related to this employee’s OOC authorization.

<sup>21</sup> See footnote 20.

days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

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

**Cause:** The DIR acknowledges this finding. One error was caused by failure to ensure that all documentation was filed correctly and promptly due to a high vacancy rate and an office move. The second error was due to human error.

**Corrective Action:** Within 90 days of the date of this report, the DIR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differentials 91 and 101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## Leave

### Positive Paid Employees

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



An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>22</sup> worked and paid absences<sup>23</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day are not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

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

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 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 DIR had 91 positive paid employees whose hours were tracked. The CRU reviewed 39 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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<sup>22</sup> For example, two hours or ten hours count as one day.

<sup>23</sup> For example, vacation, sick leave, compensating time off, etc.

Classification	Tenure	Time Frame	Hours Worked
Assistant Safety Engineer	Intermittent	7/1/20 – 6/30/21	915
Associate Safety Engineer (Elevators)	Intermittent	7/1/20 – 6/30/21	804.75
Associate Safety Engineer (Elevators)	Intermittent	7/1/20 – 6/30/21	960
Associate Safety Engineer (Pressure Vessels)	Intermittent	7/1/20 – 6/30/21	443.5
Associate Safety Engineer	Intermittent	7/1/20 – 6/30/21	256
Associate Safety Engineer	Intermittent	7/1/20 – 6/30/21	1,328
Associate Safety Engineer	Intermittent	7/1/20 – 6/30/21	1,720
Associate Safety Engineer	Intermittent	7/1/20 – 6/30/21	1,221
Associate Safety Engineer	Intermittent	7/1/20 – 6/30/21	906
Associate Safety Engineer	Intermittent	7/1/20 – 6/30/21	712
AGPA	Intermittent	7/1/20 – 6/30/21	1,447.5
AGPA	Intermittent	7/1/20 – 6/30/21	920
Associate Personnel Analyst	Intermittent	7/1/20 – 6/30/21	947.5
Attorney IV	Intermittent	7/1/20 – 6/30/21	1,009
DLC III	Intermittent	7/1/20 – 6/30/21	952.5
DLC III	Intermittent	7/1/20 – 6/30/21	942.5
DLC III	Intermittent	7/1/20 – 6/30/21	959
DLC I	Intermittent	7/1/20 – 6/30/21	949
Graduate Student Assistant	Intermittent	4/1/21 – 3/31/22	453
Industrial Relations Counsel IV	Intermittent	7/1/20 – 6/30/21	960
Information Technology Manager I	Intermittent	7/1/20 – 6/30/21	952
MST	Intermittent	7/1/20 – 6/30/21	1,256
OT (Typing)	Intermittent	7/1/20 – 6/30/21	340
Research Data Specialist III	Intermittent	7/1/20 – 6/30/21	482
Senior Accounting Officer (Specialist)	Intermittent	7/1/20 – 6/30/21	567.5
Senior Apprenticeship Consultant	Intermittent	7/1/20 – 6/30/21	419
Senior Legal Typist	Intermittent	7/1/20 – 6/30/21	112
Senior Safety Engineer – Industrial	Intermittent	7/1/20 – 6/30/21	1,400
Senior Safety Engineer – Industrial	Intermittent	7/1/20 – 6/30/21	541
Staff Services Manager I	Intermittent	7/1/20 – 6/30/21	958
Staff Services Manager II (Supervisory)	Intermittent	7/1/20 – 6/30/21	928
Student Assistant	Intermittent	4/1/21 – 3/31/22	1,140.5
Student Assistant	Intermittent	4/1/21 – 3/31/22	411.75
Student Assistant	Intermittent	4/1/21 – 3/31/22	294.5
Student Assistant	Intermittent	4/1/21 – 3/31/22	1,100.5
Student Assistant	Intermittent	4/1/21 – 3/31/22	655.5
Student Assistant	Intermittent	6/1/21 – 3/31/22	758
Student Assistant	Intermittent	4/1/21 – 3/31/22	871
Student Assistant	Intermittent	4/1/21 – 3/31/22	1,721

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.18 POSITIVE PAID TEMPORARY EMPLOYEE WORK EXCEEDED TIME LIMITATIONS</b>
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**Summary:** The DIR did not consistently monitor the actual number of days and/or hours worked to ensure that positive paid employees did not exceed the 189-day or 1,500-hour limitation in any 12-consecutive month period. This is the second consecutive time this has been a finding for the DIR.

Specifically, the following employee exceeded the 1,500-hour, 960-hour, or 189-day, limitation:

Classification	Tenure	Time Frame	Time Worked (Hours)	Time Worked Over Limit (Hours)
Student Assistant	Temporary	4/1/21 – 3/31/22	1,721	221

**Criteria:** If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of nine months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal Const., art. VII, § 5.) Time worked shall be counted on a daily basis with every 21 days worked counting as one month or 189 days equaling nine months. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

**Severity:** Serious. The number of days or hours an individual may work in a temporary appointment is limited in the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list.

**Cause:** The DIR acknowledges this finding. Previously, the HRO did not have a process in place to proactively track and monitor day/hours that positive paid and TAU employees worked.

**SPB Reply:** In DIR’s response to the September 30, 2019, report, the DIR indicated it had developed a tracking mechanism for Payroll and

Benefits staff to track hours for positive paid employees. At that time, the DIR was directed to continue to monitor positive paid employees' time.

**Corrective Action:** Within 90 days of the date of this report, the DIR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 265.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Administrative Time Off

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

During the period under review, January 1, 2021, through December 31, 2021, the DIR authorized 853 ATO transactions. The CRU reviewed 45 of those ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO (Hours)
Assistant Industrial Hygienist	11/15/21 – 11/16/21	16
AGPA	4/9/21 – 4/9/21	7
AGPA	11/22/21 – 11/22/21	2.5
AGPA	Dates Not Provided <sup>24</sup>	4
AGPA	4/9/21 – 4/9/21	4.5
Associate Safety Engineer (Elevators)	11/12/21 – 11/12/21	8
Associate Safety Engineer (Elevators)	10/7/21 – 10/21/21	1

<sup>24</sup> Despite multiple requests, the DIR did not provide documentation demonstrating the authorized ATO dates and hours.

Classification	Time Frame	Amount of Time on ATO (Hours)
Associate Safety Engineer (Elevators)	6/14/21 – 6/14/21	8
Associate Safety Engineer (Pressure Vessels)	8/25/21 – 8/26/21	12
Associate Safety Engineer (Pressure Vessels)	8/9/21 – 8/12/21	32
Attorney IV	4/30/21 – 4/30/21	8
Auditor I	Dates Not Provided <sup>25</sup>	2
DLC I	3/23/21 – 3/23/21	2
DLC I	4/21/21 – 4/21/21	2
DLC I	11/8/21 – 11/8/21	1.5
DLC II	3/25/21 – 3/25/21	8
Industrial Relations Counsel III (Specialist)	8/2/21 – 8/11/21	64
Industrial Relations Representative	4/13/21 – 4/14/21	16
Information Technology Associate	12/29/21 – 12/29/21	1
Information Technology Specialist I	10/21/21 – 10/21/21	8
Information Technology Specialist I	4/19/21 – 4/19/21	2
Information Technology Specialist I	4/16/21 – 4/16/21	8
Legal Secretary	4/14/21 – 4/14/21	2
MST	8/26/21 – 8/27/21	9
MST	4/9/21 – 4/9/21	2
MST	4/29/21 – 4/29/21	2
MST	4/19/21 – 4/21/21	12
Office Services Supervisor III (General)	12/6/21 – 12/6/21	.75
OT (Typing)	8/26/21 – 8/26/21	5
OT (Typing)	10/28/21 – 10/29/21	12
OT (Typing)	Dates Not Provided <sup>26</sup>	2
OT (Typing)	4/20/21 – 4/27/21	27
Personnel Specialist	12/28/21 – 12/28/21	2
Senior Accounting Officer (Specialist)	Dates Not Provided <sup>27</sup>	2
Senior Legal Typist	4/14/21 – 4/14/21	2
Senior Legal Typist	4/14/21 – 4/14/21	1.5
Senior Legal Typist	9/23/21 – 9/23/21	1.5
Senior Legal Typist	4/22/21 – 4/23/21	10
SSA (General)	4/8/21 – 4/8/21	10
Workers' Compensation Assistant	8/5/21 – 8/27/21	80
Workers' Compensation Consultant	4/30/21 – 4/30/21	2

<sup>25</sup> See footnote 25.

<sup>26</sup> See footnote 25.

<sup>27</sup> See footnote 25.

Classification	Time Frame	Amount of Time on ATO (Hours)
Workers' Compensation Consultant	4/23/21 – 4/23/21	1.5
Workers' Compensation Consultant	12/29/21 – 12/29/21	2
Workers' Compensation Judge I	4/28/21 – 4/29/21	16
Workers' Compensation Judge I	5/12/21 – 5/12/21	8

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.19 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED</b>
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**Summary:** The DIR did not grant ATO in conformity with the established policies and procedures. Of the 45 ATO authorizations reviewed by the CRU, 4 were found to be out of compliance for failing to provide evidence of justification for ATO. In addition, the DIR did not key one employee's ATO hours correctly into the Leave Accounting System.

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

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

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

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

**Cause:** The DIR failed to follow its internal processes for documenting and processing ATO approvals. Due to the Covid-19 pandemic and the Families First Coronavirus Recovery Act for federal and state benefits allowed during this time, there was a significant increase in the volume of ATO requests submitted. Additionally, the DIR experienced high vacancy and employee turnover rates.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19991.10 and Human Resources Manual Section 2121.

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, October 1, 2021, through December 31, 2021, the DIR reported 276 units comprised of 2,710 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
October 2021	104	30	30	0
October 2021	113	43	43	0
October 2021	120	2	2	0
November 2021	774	4	4	0
November 2021	775	2	2	0
November 2021	785	22	22	0
November 2021	792	30	30	0
December 2021	106	2	2	0
December 2021	107	39	39	0
December 2021	774	4	4	0
December 2021	775	2	2	0
December 2021	785	22	22	0

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO.20 DEPARTMENT HAS NOT IMPLEMENTED A MONTHLY INTERNAL AUDIT PROCESS TO VERIFY ALL LEAVE INPUT IS KEYED ACCURATELY AND TIMELY</b>
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**Summary:** The DIR failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary. This is the second consecutive time this has been a finding for the DIR.

**Criteria:** Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.) Departments are directed to create an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall identify and record all errors found and shall certify that all leave records for the unit/pay period identified have been reviewed and all leave errors identified have been corrected. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)



**Severity:** Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put 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 DIR acknowledges this finding. During the review period, the DIR did not have a process implemented to reconcile leave input on a monthly basis.

**SPB Reply:** In DIR's response to the September 30, 2019, report, the DIR reported that Payroll and Benefits staff implemented the use of the Leave Activity and Correction Certification form. At that time, the CRU directed the DIR to continue to reconcile the leave usage against monthly timesheets.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the department has implemented to ensure that its monthly internal audit process was documented and that all leave input is keyed accurately and timely.

### 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>28</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.

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<sup>28</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.

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>29</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, September 1, 2021, through March 1, 2022, the DIR had 11 employees with qualifying and non-qualifying pay period transactions. The CRU reviewed 12 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time Base	Number Reviewed
Non-Qualifying Pay Period	Full Time	1
Qualifying Pay Period	Full Time	11

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING No.21 INCORRECT APPLICATION OF STATE SERVICE AND LEAVE TRANSACTION</b>
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**Summary:** The CRU found one error in the DIR’s state service transactions:

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<sup>29</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.

Type of Transaction	Time base	State Service Incorrectly Posted	Leave Accruals Incorrectly Posted
Non- Qualifying Pay Period	Full Time	1	0

This is the second consecutive time this has been a finding for the DIR.

**Criteria:** In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code Regs., tit.2, § 599.608.) Absences from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency 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.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

**Severity:** Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

**Cause:** The DIR acknowledges this finding. The cause was human error.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB documentation which demonstrates the corrections the

department has implemented to ensure state service transactions are keyed accurately.

## **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.22 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the DIR’s commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the DIR’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 DIR did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING NO.23 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the DIR 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 DIR 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 119 permanent DIR employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies, and guidelines.

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 24 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The DIR did not provide annual performance appraisals to 118 of 119 employees reviewed after the completion of the employee's

probationary period. This is the second consecutive time this has been a finding for the DIR.

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

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

**Cause:** The DIR did not follow up to ensure compliance with timely completion of performance appraisals due to lack of an effective tracking system after sending out annual reminders annually in March to remind supervisors of their requirement.

**Corrective Action:** The DIR asserts it has taken steps to ensure compliance in this area. Within 90 days of the date of this report, the DIR must submit to the SPB 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 DIR's departmental response is attached as Attachment 1.

### **SPB REPLY**

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

Furthermore, mid-cycle, the CRU will perform a special review of all the areas where the DIR had repeat findings to ensure that the DIR has made appropriate systemic changes to achieving compliance in the problematic areas.

DEPARTMENT OF INDUSTRIAL RELATIONS

Division of Administration

Human Resources Office

2180 Harvard Street, Suite 160

Sacramento, CA 95815



April 18, 2023

Suzanne M. Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

Subject: Department of Industrial Relations response to draft State Personnel Board Compliance Review Report

Dear Ms. Ambrose,

This letter is in response to the draft State Personnel Board (SPB) Compliance Review Report submitted to the Department of Industrial Relations (DIR). The draft report summarized the DIR's personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes.

Generally, we find the report to be thorough and an accurate summary of processes that existed during the time period reviewed. DIR takes these compliance issues seriously and is committed to correcting all deficiencies noted in the report and strives to comply with mandated requirements.

DIR has reviewed the report and prepared a cause and action plan for each finding below:

### **FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

The report noted DIR did not provide 13 probationary reports of performance for 11 of the 84 appointments reviewed.

**Cause:** Despite the Human Resources Office (HRO) notifying supervisors of the requirement to complete probationary evaluations for employees and included due dates, not all supervisors completed or provided probationary evaluations to the HRO, and no follow-up was done to ensure compliance. In addition, the DIR's notification and tracking system for Probationary Evaluations, Salesforce, requires HRO staff to manually enter probationary due dates when processing a new appointment.

**Action:** To further improve DIR's compliance, the HRO is implementing a process for pulling monthly reports through Salesforce to identify outstanding probationary reports to notify supervisors/managers and follow an escalation process for those in noncompliance. In September 2021, the HRO Performance Management Branch began providing training to supervisors/managers on probationary period timeframes and best practices for the completion of probationary reports. In March 2022, the HRO Transactions Unit provided refresher training to Personnel Specialists for timely and accurately entering probationary due dates when keying an appointment and entering the



dates received in Salesforce and reviewing reports for accuracy and completeness before sending to file.

**FINDING NO. 4 – Department Did Not Provide Benefit Information in Accordance with Civil Service Law**

The report noted that DIR did not provide explanation of benefits prior to acceptance of appointment for 2 out of 84 appointments reviewed.

Cause: DIR acknowledges we were unable to provide documentation to substantiate an explanation of benefits, prior to appointment, in the form of a formal offer letter for two applicants.

Action: DIR continues to provide a good faith effort to provide the explanation of benefits prior to appointment by including it in the formal job offer letter to candidates. HRO monitors receipt of the signed job offer letters from candidates to ensure compliance.

**FINDING NO. 5 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

The report noted that DIR did not retain 74 NOPAs of the 84 appointments reviewed.

Cause: DIR acknowledges this finding. During this time period, due to a high vacancy rate, transitioning to a telework environment during the pandemic, and the physical relocation of the DIR's HRO from Oakland to Sacramento, there was a failure to ensure all appointment documentation was filed correctly and promptly in employee's personnel files.

Action: In April 2023, the HRO Transactions Unit provided 'Fundamental of Personnel' training to all Personnel Specialists. We are also developing a written procedure for processing and tracking NOPAs.

**FINDING NO. 7 – Complainant Was Not Notified of the Reason for Delay in Decision Within the Prescribed Time Period**

The report noted 1 of the 11 complaint investigations exceeded 90 days and the DIR failed to provide written communication to the complainant regarding the status of the complaint.

Cause: Past practice was to have each investigation managed by the staff member investigating the complaint. Upon transition of workload, there was an oversight on the received date which led to the 90-day notification being missed.

Action: DIO has developed a centralized document repository for all staff on SharePoint to facilitate easier sharing of information and better tracking of workload.

**FINDING NO. 8 – Union Was Not Notified of Personal Services Contract**

The report noted DIR did not notify the union prior to entering into 1 of the 18 PSC's reviewed.

Cause: DIR acknowledges this finding. One contract was executed without proper notification to the unions. Upon review, inconsistencies were found in procurement file documentation and use of internal checklists for contract unit staff. DIR has documented expectations for contract unit staff on unions notifications; however, the notification confirmation was not reviewed by supervisors.

Action: The DIR contracts and procurement unit has created a new checklist for staff to use when processing and executing a contract. This checklist includes notification to union as part of the contract process and is reviewed prior to final contract execution. DIR is also in the process of implementing a final contract closeout review process to ensure all documentation is properly saved in the contract file.

### **FINDING NO. 9 – Ethics Training Was Not Provided for All Filers**

The report noted DIR did not provide ethics training to 5 of 200 existing filers, and 16 of 79 new filers within six months of their appointment.

Cause: DIR acknowledges this finding. Following the 2018 audit findings DIR transitioned to an automated tracking system for training. Prior to that it had been the responsibility of the employee's direct supervisor to track training completion. Due to manual process and insufficient internal procedures, the training was often not completed or documented correctly. Following the 2019 transition to an automated system, DIR was able to improve its compliance by reducing its non-compliant existing filers from 71.6% to 2.5% and the non-compliant new filers from 89% to 20%. Analysis of the non-compliant filers showed that 23% were due to late entry into the automated system, 67% due to employee non-compliance despite timely notification of the requirement, and 10% being on leave from the department.

Action: To further improve DIR's compliance with the Ethics training requirements, DIR has made two significant changes to its processes. First DIR has implemented regular reports between the Transaction team and the Ethic's Officer that updates the Ethic's Officer of all new filers and changes in positions. The Ethics Officer reviews these reports against the notification/tracking system to ensure all required staff have been added to in a timely manner. Secondly, DIR is implementing an escalation element to the notification process that now includes managers and executive staff. The escalation process increases the number of notifications to the filer and at the 2-week mark adds notifying the filer's direct management of impending deadline. If a filer still fails to meet the deadline an escalation notification is sent to a higher level of management. Late filers may be referred to performance management, for review of potential progressive discipline.

### **FINDING NO. 10 – Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs**

The report noted DIR did not provide basic supervisory training to 1 of 38 new supervisors within 12 months of appointment; did not provide manager training to 4 of 6 new managers within 12 months of appointment; and did not provide biennial leadership training to 207 of 238 existing supervisors, managers, and/or CEAs.

Cause: The DIR states that the Office of Administrative Services (OAS) Training Unit did not have an automated tracking system for training during the audit period. During that

time, DIR had only one staff member responsible for manually tracking the supervisory and manager training, in addition to having multiple competing priorities. As identified during the audit process, findings surrounding the biennial leadership training were mostly due to DIR having a different interpretation than SPB and CalHR concerning Government Code (GC) section 19995.4 and CalHR Human Resources Manual section 2801. During the audit, SPB requested training records completed for the calendar years 2020 and 2021. The DIR calculated the biennial periods based on the effective day of GC section 19995.4, as explained in the CalHR Human Resources Manual section 2801, which is when the employee completed their initial leadership training requirement (SDP, MDP, and EDP) or the end of their probationary period, whichever came first. The DIR maintained training records for each employee based on their unique specific biennial period and not by calendar years. The DIR requests additional guidance from SPB to better define GC section 19995.4 to address the calendar year in audit. The DIR believes it provided training to all existing supervisors, managers, and CEAs in question based on each employee's specific biennial periods. However, based on SPB's interpretation of the biennial period, DIR provided biennial leadership training to 31 of 238 existing supervisors, managers, and CEAs.

Action: The DIR will start tracking the biennial leadership training and development requirement by calendar year to align with the SPB's audit parameters. In April 2023, DIR launched a new learning management system that will serve as the platform for centralize training administration, delivery, reporting, and documentation storage.

#### **FINDING NO. 11 – Sexual Harassment Prevention Training Was Not Provided for All Employees**

The report noted DIR did not provide sexual harassment prevention training to 7 of 65 new supervisors within 6 months of their appointment, to 5 of 256 existing supervisors every 2 years, and to 11 of 200 existing non-supervisors every 2 years.

Cause: The DIR states that it recognizes the importance of sexual harassment prevention training to ensure a safe and healthy workplace. However, the DIR encountered issues with the vendor that was administering the sexual harassment prevention training from 2019-2020; and therefore, did not renew the contract with them. Upon the expiration of the contract, this vendor did not turn over all of DIR's employee records, as requested.

Action: In October 2020, the DIR began using a new vendor to administer this training.

#### **FINDING NO. 13 – Alternate Range Movement Did Not Comply with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The report noted 1 error of the 4 alternate range movements. Specifically, DIR did not provide complete documentation that the employee met the requirements of the ARC.

Cause: DIR acknowledges this finding. During this time period, DIR did not have an established centralized process or procedure defining clear roles and responsibilities for obtaining and retaining substantiation for alternate range change movement.

Action: DIR is in the process of developing a written procedure for validating eligibility and processing alternate range movement for DIR employees. This procedure will include defined roles and responsibilities and include direction for document retention.

#### **FINDING NO. 14 – Incorrect Authorization of Hire Above the Minimum Request**

The report noted 1 error in the 2 HAM requests processed. Specifically, DIR did not provide justification demonstrating extraordinary qualifications, candidate's application, nor the CalHR 684, 685 or 691 form. There is no evidence that the candidate was entitled to a HAM.

Cause: DIR acknowledges this finding. During this time period, due to a high vacancy rate, transitioning to a telework environment during the pandemic, and the physical relocation of the DIR's HRO from Oakland to Sacramento, there was a failure to ensure all appropriate documentation was filed correctly and promptly.

Action: DIR developed an administrative procedure for Hiring Above Minimum in October 2020. The DIR HRO will provide a reminder to staff on the appropriate receipt and retention of HAM requests.

#### **FINDING NO. 15 – Incorrect Authorization of Bilingual Pay**

The report noted 12 errors of the 50 reviewed. These errors included DIR's failure to supply supporting documentation demonstrating the need for bilingual services and that the employee has been tested and certified bilingual.

Cause: DIR acknowledges that 12 employees identified did not have supporting documentation to approve Bilingual Pay. During this time period, DIR did not have a procedure in place to provide direction for the processing bilingual pay.

Action: DIR has developed a departmental procedure for Bilingual Position Designation and Fluency Requirements. This procedure provides the guidelines, criteria, and procedures used by DIR regarding designating bilingual positions, fluency requirements and authorizing a bilingual pay differential.

#### **FINDING NO. 16 – Incorrect Authorization of Pay Differentials**

The report noted 19 errors of the 50 reviewed. Including, one instance of an employee's classification not being eligible to receive the 5% recruitment and retention pay, resulting in an overpayment, and 18 instances where DIR failed to supply documentation demonstrating the employee met the criteria for the pay differential.

Cause: DIR acknowledges this finding. During the review period, DIR did not have an established centralized process for reviewing and processing pay differentials.

Action: The HRO Transactions Unit is currently developing procedures and training for staff to ensure appropriate application and substantiation is received and retained in accordance with audit requirements. An Accounts Receivable will be established to correct the overpayment.

#### **FINDING NO. 17 – Incorrect Authorization of Out-of-Class Pay**

The report noted 2 errors of the 4 OOC authorized by DIR. In one instance due to lack of documentation, it is unknown whether this OOC pay was correctly authorized and/or

appropriate. The second error was due to not recalculating the OOC pay after the 7/1/21 GEN, resulting in undercompensating the employee.

Cause: DIR acknowledges this finding. During this time period, due to a high vacancy rate, transitioning to a telework environment during the pandemic, and the physical relocation of the DIR's HRO from Oakland to Sacramento, there was a failure to ensure all appropriate documentation was filed correctly and promptly. The second error identified was due to human error.

Action: DIR is currently developing an administrative procedure for Out-of-Class pay, which will include direction on the substantiation required. Payment history is being corrected to accurately compensate the employee, and the HRO Transaction staff will be provided refresher training to understand how to accurately calculate OOC pay, and subsequent adjustments.

### **FINDING NO. 18 – Positive Paid Temporary Employees' Work Exceeded Time Limitations**

The report noted DIR did not consistently monitor the actual number of days and/or hours worked to ensure that positive paid employees did not exceed the 189-day or 1,500-hour limitation in any 12-consecutive month period for 1 of 39 reviewed.

Cause: DIR acknowledges this finding. Previously the HRO did not have a process in place to proactively track and monitor days/hours for positive paid and TAU employees.

Action: The HRO Transactions Unit will be implementing a monthly report to track the actual number of days and hours worked for TAU employees to ensure they do not exceed limitations. This report will be provided to management as notification of which employees are approaching the maximum days/hours worked to ensure compliance.

### **FINDING NO. 19 – Administrative Time Off Was Not Properly Documented**

The report noted DIR did not grant ATO in conformity with the established policies and procedures. Of the 45 ATO authorizations reviewed, 4 were found to be out of compliance for failing to provide evidence of justification for ATO, and 1 employee's ATO hours were not keyed correctly into the SCO Leave Accounting System.

Cause: Due to the COVID-19 pandemic and the FFCRA federal and state benefits allowed during this time, there was a significant increase to the volume of ATO requests submitted to the HRO Transactions Unit. In addition, the HRO has experienced a high vacancy rate and employee turnover during this time period. This resulted in the HRO's failure to implement and follow internal processes for documenting and processing ATO approvals.

Action: The HRO has implemented a review process in which all requests for ATO must be reviewed and approved by the Chief of Human Resources. The HRO has developed a tracking which captures all employee ATO requests received, dates and hours of approval, and the justification for the ATO. In addition, with the implementation of the DIR's electronic timekeeping system, Tempo, ATO leave entered on an employee's timesheet updates in the SCO Leave Accounting System through an electronic interface, eliminating the need for manual keying and reducing the potential for human error.

**FINDING NO. 20 – Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely**

The report noted DIR failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely and to certify that all leave records have been reviewed and corrected if necessary.

Cause: DIR acknowledges this finding. During the time period reviewed, DIR did not have an implemented process to reconcile leave input on a monthly basis.

Action: With the implementation of the DIR's electronic timekeeping system, Tempo, leave input is interfaced with the SCO California Leave Accounting System (CLAS) each pay period. The DIR receives a report from CLAS which is audited against the Tempo system through an automated process. The HRO Transactions team then reconciles and corrects any discrepancies to ensure leave input is accurate and processed timely for all DIR employees, ensuring compliance.

**FINDING NO. 21 – Incorrect Application of State Service and Leave Transaction**

The report noted 1 error of the 12 DIR State service transactions reviewed where State Service was incorrectly posted.

Cause: DIR acknowledges this finding. This occurred due to human error.

Action: The HRO has corrected the employee record to reflect the correct State Service accrual. In April 2023, the HRO Transactions Unit provided 'Fundamental of Personnel' training to all Personnel Specialists. In addition, Transactions Leadership sent out a reminder to all Transactions staff on the importance of validating and reconciling State Service transactions in the SCO system each month.

**FINDING NO. 24 – Performance Appraisals Were Not Provided to All Employees**

The report noted DIR did not provide annual performance appraisals to 118 of 119 employees reviewed after the completion of the employee's probationary period.

Cause: Despite the Human Resources Office (HRO) sending an annual reminder each March to supervisors of the requirement to complete a PAS for all eligible employees, not all supervisors completed or provided PASs to the HRO, and no follow-up was done to ensure compliance. The lack of oversight and follow-up was due to the lack of an effective tracking system.

Action: The DIR has established March of each year as the timeframe for completion of Performance Appraisals for all DIR employees who have completed probation. In March 2023, the HRO released a memorandum providing direction to supervisors and managers for completion of annual performance appraisals. To further improve DIR's compliance, we have added programming to our Salesforce system, which automates our process for sending reminders to supervisors/managers and provides reports that the HRO utilizes to identify outstanding performance appraisals and follow an escalation process for those in noncompliance. In addition, in September 2021 the HRO Performance Management

Branch began providing training to supervisors/managers on the performance appraisal summary process and best practices for the completion.

## **CONCLUSION**

The DIR appreciated the opportunity to address the findings in this report and our proposed process changes for increasing compliance. We anticipate that the proposed changes will positively impact future outcomes.

If you have any questions or would like to discuss further please feel free to contact our Chief Internal Auditor, Mathew Raute, at 916.860.2219 or via email at [mraute@dir.ca.gov](mailto:mraute@dir.ca.gov).

Sincerely,

Krystal Densmore, Chief  
Human Resources Office