



COMPLIANCE REVIEW

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Compliance Review Unit
State Personnel Board
October 18, 2024

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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), 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." The SPB and the 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 the 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, the 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 Labor and Workforce Development Agency's (LWDA) 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
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Some that Were Provided Were Untimely
Equal Employment Opportunity	In Compliance	Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules
Mandated Training	Substantial Compliance	Sexual Harassment Prevention Training Was Not Provided for All Employees
Compensation and Pay	Very Serious	Incorrect Application of Salary Determination Laws, Rules, and CalHR Policies and Guidelines for Appointment
Compensation and Pay	In Compliance	Hire Above Minimum Request Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Serious	Department Did Not Certify that All Leave Records Were Reviewed

Area	Severity	Finding
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
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	In Compliance	Performance Appraisal Policy and Processes Complied with Civil Service Laws, Board Rules, and CalHR Policies

BACKGROUND

The LWDA was established in 2003 to address issues relating to California workers and their employers and includes the Agricultural Labor Relations Board, California Workforce Development Board, Department of Industrial Relations, Employment Development Department (EDD), Unemployment Insurance Appeals Board, Employment Training Panel, Occupational Safety and Health Standards Board, Occupational Safety and Health Appeals Board, Public Employment Relations Board, and the Workers' Compensation Appeals Board.

The mission of the Agency is to protect and improve the well-being of California's current and future workforce by strengthening and improving the operation and management of programs that protect and provide services to California's workers, promoting program access and coordinating enforcement activities to protect workers and create an even playing field for employers.

The EDD performs human resources operations for the LWDA.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the LWDA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The primary objective of the review was to determine if the LWDA's personnel practices, policies, and procedures complied with state civil service

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

laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The LWDA did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the LWDA's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the LWDA provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The LWDA did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the LWDA did not make any additional appointments during the compliance review period.

The LWDA's appointments were also selected for review to ensure the LWDA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the LWDA 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. During the compliance review period, the LWDA did not issue or authorize red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements or out-of-class assignments.

The review of the LWDA'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 LWDA did not execute any PSC's during the compliance review period.

The LWDA's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all employees were provided sexual harassment prevention training within statutory timelines. The LWDA did not have any supervisors, managers, or Career Executive Assignments to review for leadership and development training.

The CRU reviewed the LWDA'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 LWDA's units to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the LWDA'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 LWDA employees who used Administrative Time Off (ATO) to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of the LWDA's 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 LWDA's policies and processes concerning nepotism, and workers' compensation. The review was limited to whether the LWDA's policies and processes adhered to procedural requirements.

The LDWA declined an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the LWDA's written response on September 12, 2024, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

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, July 1, 2022, through June 30, 2023, the LWDA made 16 appointments. The CRU reviewed six of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Information Technology Specialist III	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Research Data Specialist I	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Attorney V	Transfer	Permanent	Full Time	1

SEVERITY: SERIOUS	FINDING NO. 1 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND SOME THAT WERE PROVIDED WERE UNTIMELY
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Summary: The LWDA did not provide three probationary reports of performance for two of the six appointments reviewed by the CRU. In addition, the LWDA did not provide one probationary report of performance for one of six appointments in a timely manner, as reflected in the tables below.

Classification	Appointment Type	No. of Appointments	Total No. of Missing Probation Reports
Information Technology Specialist III	Certification List	1	2
Research Data Specialist I	Certification List	1	1

Classification	Appointment Type	No. of Appointments	Total No. of Late Probation Reports
Attorney	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: The LWDA states that internal compliance has been facilitated by tracking all probationary report deadlines, notifying program managers about probationary report deadlines for new staff, and sending reminders to program managers of pending reports. However, the LWDA recognizes these measures were not sufficient to ensure all evaluations were completed timely.

Corrective Action: Within 90 days of the date of this report, the LDWA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Equal Employment Opportunity

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

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

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

IN COMPLIANCE	FINDING NO. 2 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM COMPLIED WITH ALL CIVIL SERVICE LAWS AND BOARD RULES
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After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the LDWA's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Secretary of the LDWA. The LDWA also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

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 the CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*)

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

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

training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the LWDA’s mandated training program that was in effect during the compliance review period, August 1, 2021, through July 31, 2023. The LWDA’s ethics training was found to be in compliance, while the LWDA’s sexual harassment prevention training was found to be out of compliance.

SEVERITY: VERY SERIOUS	FINDING NO. 3 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES
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Summary: The LWDA did not provide sexual harassment prevention training to 1 of 26 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: Substantial Compliance. The department has achieved 90% or more compliance in this area and has provided a response sufficient to address full compliance in the future; therefore, no corrective action is required.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by the CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee’s salary rate² 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

² “Rate” is any one of the salary rates in the resolution by the CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

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, July 1, 2022, through June 30, 2023, the LWDA made 16 appointments. The CRU reviewed six of those appointments to determine if the LWDA applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Information Technology Specialist III	Certification List	Permanent	Full Time	\$11,105
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,369
Research Data Specialist I	Certification List	Permanent	Full Time	\$6,083
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,742
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$6,907
Attorney V	Transfer	Permanent	Full Time	\$15,228

SEVERITY: VERY SERIOUS	FINDING NO. 4 INCORRECT APPLICATION OF SALARY DETERMINATION LAWS, RULES, AND CALHR POLICIES AND GUIDELINES FOR APPOINTMENT
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Summary: The CRU found one error in the six salary determinations reviewed:

Classification	Description of Finding	Criteria
Staff Services Analyst (General)	Department did not receive an exception to salary for employee to retain salary and anniversary date for a Limited Term to Permanent appointment. Employee was overpaid.	Cal. Code Regs., tit. 2, section 599.676

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

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

Cause: As the personnel transaction processing entity for the LWDA, the EDD states it recognizes the importance of accurate application of salary determination laws, rules, policies, and guidelines; however, these errors were caused by a lack of training and oversight of the salary determination process.

Corrective Action: Within 90 days of the date of this report, the LDWA 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 LDWA 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.³ (Gov. Code, § 19836, subd. (b).)

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

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

During the period under review, July 1, 2022, through June 30, 2023, the LWDA authorized one HAM request. The CRU reviewed the one authorized HAM request to determine if the LWDA correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which is listed below:

³ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney IV	Certification List	New to the State	\$11,296 – \$14,503	\$14,149

IN COMPLIANCE	FINDING NO. 5 HIRE ABOVE MINIMUM REQUEST COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the one HAM request the LWDA made during the compliance review period satisfied civil service laws, Board rules and CalHR policies and guidelines.

Leave

Positive Paid Employees

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

An employee is appointed TAU-ATW when he/she is not expected to work all the working days of a month. When counting 189 days, every day worked, including partial days⁴ worked and paid absences⁵, 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

⁴ For example, two hours or ten hours count as one day.

⁵ For example, vacation, sick leave, compensating time off, etc.

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).)

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

Classification	Tenure	Time Frame	Time Worked
Attorney IV	Retired Annuitant	7/1/22 – 6/30/23	813.75 hours
Office Technician (Typing)	Retired Annuitant	7/1/22 – 6/30/23	617.5 hours

IN COMPLIANCE	FINDING NO. 6 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The LWDA provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

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

During the period under review, May 1, 2022, through April 30, 2023, the LWDA authorized four ATO transactions. The CRU reviewed four of these ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	9/6/22	1 hour
Staff Services Analyst (General)	9/8/22	1 hour
Staff Services Analyst (General)	3/29/23 – 3/30/23	12 hours
Staff Services Manager II	9/7/22	1 hour

IN COMPLIANCE	FINDING NO. 7 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The LWDA provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

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

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

During the period under review, February 1, 2023, through April 30, 2023, the LWDA reported three units comprised of 34 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
February 2023	100	25	25 ⁶	0
March 2023	101	7	7	0
April 2023	102	1	1	0

SEVERITY: SERIOUS	FINDING NO. 8 DEPARTMENT DID NOT CERTIFY THAT ALL LEAVE RECORDS WERE REVIEWED
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Summary: The LWDA failed to certify that all leave records have been reviewed and corrected if necessary for one of the three units/pay periods reviewed. The LWDA uses a Leave Activity and Correction Certification form, and it was difficult to determine if all units and pay periods were reviewed by the LWDA.

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

⁶ Statutory officers with a monthly salary rate are not subject to Board of Control Rules governing calculation of short time salary payments. Reports of Attendance are not legally required as a prerequisite for payments of salaries of those statutory officers paid under the USPS. Statutory officers do not earn sick leave, vacation, or overtime credits.

from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

Cause: As the personnel transaction processing entity for the LWDA, the EDD states it recognizes the importance of ensuring the accuracy of all leave input keyed; however, these errors were caused by a lack of training and oversight of the leave certification process.

Corrective Action: Within 90 days of the date of this report, the LDWA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Human Resources Manual Section 2101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

The state recognizes two different types of absences while an employee is on pay status, paid or unpaid. The unpaid absences can affect whether a pay period is 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.⁷ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before

⁷ 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.

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 employees⁸ 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, July 1, 2022, through June 30, 2023, the LWDA had two employees with qualifying and non-qualifying pay period transactions. The CRU reviewed two transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	No. Reviewed
Qualifying	Full Time	1
Non-Qualifying	Full Time	1

IN COMPLIANCE	FINDING NO. 9	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU determined that the LWDA ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring

⁸ 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.

and that nepotism is antithetical to a merit-based civil service system; (2) a definition of “nepotism” as an employee’s use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of “personal relationship” as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

IN COMPLIANCE	FINDING NO. 10 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU verified that the policy was disseminated to all staff and emphasized the LWDA’s commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the LWDA’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 LWDA did not employ volunteers during the compliance review period.

IN COMPLIANCE	FINDING NO. 11 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU verified that the LWDA 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 LWDA received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

IN COMPLIANCE	FINDING NO. 12 PERFORMANCE APPRAISAL POLICY AND PROCESSES COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the performance appraisals selected for review. Accordingly, the LDWA's performance appraisal policy and processes satisfied civil service laws, Board rules, policies and guidelines.

DEPARTMENTAL RESPONSE

The LDWA's departmental response is attached as Attachment 1.

SPB REPLY

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



STATE OF CALIFORNIA
 Labor & Workforce Development Agency

GOVERNOR Gavin Newsom • SECRETARY Stewart Knox

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
 California Workforce Development Board • Department of Industrial Relations
 Employment Development Department • Employment Training Panel • Public Employment Relations Board

To: Luisa Doi, Compliance Manager
 State Personnel Board **Date:** September 11, 2024

From: Jay Sturges, Deputy Secretary Fiscal Policy & Admin
 Labor and Workforce Development Agency

Subject: RESPONSE TO STATE PERSONNEL BOARD COMPLIANCE REVIEW REPORT

This letter serves as a response to the findings of the 2023 Compliance Review Report for the Labor and Workforce Development Agency (LWDA). The LWDA takes compliance issues very seriously and has taken steps to ensure both current and future compliance with the State Personnel Board (SPB) audit findings.

Finding No. 1 – Probationary Evaluations Were Not Provided for All Appointments Reviewed and Some That Were Provided Were Untimely

Summary: The LWDA did not provide 3 probationary reports of performance for 2 of the 6 appointments reviewed by the Compliance Review Unit (CRU). In addition, the LWDA did not provide 1 probationary report of performance for 1 of 6 appointments in a timely manner.

Cause: The LWDA recognizes the importance of completing probationary reports for new appointments. Internal compliance has been facilitated by tracking all probationary report deadlines, notifying program managers about probationary report deadlines for new staff, and sending reminders to program managers of pending reports. However, the LWDA recognizes these measures were not sufficient to ensure all evaluations were completed timely. LWDA has begun evaluating and revising the current process to ensure future compliance.

Finding No. 3 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The LWDA did not provide sexual harassment prevention training to 1 of 26 existing non-supervisors every 2 years. The LWDA provides Sexual Harassment Prevention (SHP) Training to all employees through the EDD Learning Management System (LMS) by sending notifications and reminders for employees to complete their SHP Training timely. This training is available to all employees at the time of hire. The LWDA continues to work on refining the system, policies, and procedures to improve record keeping and future compliance.

RESPONSE TO STATE PERSONNEL BOARD COMPLIANCE REVIEW
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Finding No. 4 – Incorrect Application of Salary Determination Laws, Rules, And CalHR Policies and Guidelines for Appointment

Summary: The CRU found 1 error in the 6 salary determinations reviewed.

Cause: As the personnel transaction processing entity for the LWDA, the EDD recognizes the importance of accurate application of salary determination laws, rules, policies, and guidelines, however, these errors were caused by a lack of training and oversight of the salary determination process.

Finding No. 8 – Department Did Not Certify that All Leave Records Were Reviewed

Summary: The LWDA failed to certify that all leave records have been reviewed and corrected if necessary for 1 of the 3 units/pay periods reviewed. The LWDA uses a Leave Activity and Correction Certification form, and it was difficult to determine if all units and pay periods were reviewed by the LWDA.

Cause: As the personnel transaction processing entity for the LWDA, the EDD recognizes the importance of ensuring the accuracy of all leave input keyed, however, these errors were caused by a lack of training and oversight of the leave certification process. As we await the full implementation of an enterprise-wide system that would meet this requirement, the EDD has implemented the process to ensure leave records are properly certified.

If you have any questions or need additional information, please contact Haley Versoza at (916) 651-7095 or Haley.Versoza@edd.ca.gov.



JAY STURGES,

Deputy Secretary Fiscal Policy and Administration
Labor and Workforce Development Agency

cc: Alicia Leisenring, EDD
Haley Versoza, EDD
Isaac Garcia-Long, LWDA