



COMPLIANCE REVIEW REPORT

CALIFORNIA LAW REVISION COMMISSION

Compliance Review Unit
State Personnel Board
April 27, 2022

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INTRODUCTION

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

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

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

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

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

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

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well

as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Law Revision Commission (CLRC) personnel practices in the areas of 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	In Compliance	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Very Serious	Equal Employment Opportunity Program Has Not Been Established
Personal Services Contracts	Serious	Unions Were Not Notified of Personal Services Contracts
Personal Services Contracts	Serious	Written Justification Was Not Provided for All Personal Services Contracts
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Very Serious	Incorrectly Posted Leave Usage and/or Leave Credit
Policy	Very Serious	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Very Serious	Workers' Compensation Policy Was Not Provided to New Employees by the End of First Pay Period

Area	Severity	Finding
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

BACKGROUND

The CRLC is an independent state agency that researches legal problems and recommends statutory reforms to solve them. Since its creation in 1953, the CLRC has made over 400 reform recommendations, with over 90% enacted into law. In 2019, the CLRC was assigned a major new responsibility, establishing and operating a second multi-member law reform body, the Committee on Revision of the Penal Code (CRPC).

The CLRC currently has seven staff members. Six of those employees are attorneys who provide legal and policy research, and analytical support to the CRLC and the CRPC. There is one full-time administrative staff employee.

The Department of General Services (DGS) performs human resources operations for the CRLC.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CLRC’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 CLRC’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.

The CLRC did not conduct any examinations or permanent withhold actions during the compliance review period.

A cross-section of the CLRC’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 CLRC provided, which included Notice of Personnel Action forms, Request for Personnel Actions, vacancy postings, certification

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

lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The CLRC did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the CLRC did not make any additional appointments during the compliance review period.

The CLRC's appointments were also selected for review to ensure the CLRC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CLRC 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 CLRC 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 CLRC's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

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

The CLRC'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 CRU reviewed the CLRC's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department

²If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CLRC's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CLRC'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. The CLRC did not authorize Administrative Time Off. Additionally, the CLRC did not track any temporary intermittent employees by actual time worked during the compliance review period.

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

The CLRC declined to have an exit conference. The CRU received and carefully reviewed the CLRC's written response on April 5, 2022, 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, 2020, through June 30, 2021, the CLRC made two appointments. The CRU reviewed both of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Career Executive Assignment (CEA) C, Chief Deputy Director	CEA	Permanent	Full Time	1
Attorney	Certification List	Permanent	Full Time	1

IN COMPLIANCE	FINDING NO. 1 APPOINTMENTS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES
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The CLRC measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the list appointments reviewed, the CLRC ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

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).)

SEVERITY: VERY SERIOUS	FINDING NO. 2 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM HAS NOT BEEN ESTABLISHED
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Summary: Although the CLRC has a designated EEO Officer who also serves as the Executive Director of the department, the CLRC failed to provide documentation demonstrating that they have an active EEO program. An active EEO program should include the following components:

1. Departmental policy statement committing the department to equal employment opportunity.
2. An EEO Officer who is responsible for developing, implementing, coordinating, and monitoring the department's EEO program.
3. An active DAC.

Criteria: 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).) The EEO Officer shall, among other duties, analyze and report on appointments of employees, bring issues of concern regarding EEO to the appointing power and recommend appropriate action, and perform other duties necessary for the effective implementation of the agency EEO plans. (*Ibid.*)

Severity: Very Serious. To have an effective EEO program, the head of the organization must be actively involved. Due to the substantial responsibilities held by each department's EEO Officer, it is essential that each department dedicate sufficient staff resources to successfully maintain an effective EEO program. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The CLRC states that this finding was the result of an incorrect assumption that if EEO issues were ever to arise, they could be addressed on an ad hoc basis through consultation with DGS and CalHR. Additionally, it was assumed that a fully implemented EEO

program would not be practicable in an agency comprised of eight employees. Furthermore, the CLRC was not aware of the requirement that it must be an active DAC.

Corrective Action: Within 90 days of this report, the CLRC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure the establishment of an active EEO program, comprised of a policy statement committing the department to equal employment opportunity, an EEO Officer who is responsible for developing, implementing, coordinating, and monitoring their department's EEO program, and an active DAC. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and meeting minutes, must be included with the corrective action response.

Personal Services Contracts

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

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

During the period under review, July 1, 2020, through June 30, 2021, the CLRC had two PSC's that were in effect. The CRU reviewed both of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Anhlan N. Tran	Document Design	1/5/21 – 1/29/21	\$5,500.00	Yes	No
Nicole Antonio	Copy Editing	1/13/21 - 1/28/21	\$600.00	No	No

SEVERITY: SERIOUS	FINDING NO. 3 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS
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Summary: The CLRC did not notify unions prior to entering into both of the PSC’s reviewed.

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

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

Cause: The CLRC states that they were not aware that certain services could be provided by state employees and that unions needed to be notified.

Corrective Action: It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing a PSC. The PSC’s reviewed during this compliance review involved document design and copy editing, functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CLRC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

SEVERITY: SERIOUS	FINDING NO. 4 WRITTEN JUSTIFICATION WAS NOT PROVIDED FOR ALL PERSONAL SERVICES CONTRACTS
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Summary: The CLRC did not prepare or retain written justification as to why one contract satisfied Government Code section 19130, subdivision (b).

Vendor	Services	Contract Dates	Contract Amount
Nicole Antonio	Copy Editing	1/13/21 – 1/28/21	\$600.00

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

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

Cause: The CLRC states that the cause of this finding is due to a drafting error. The justification was inadvertently omitted from one of the PSCs reviewed.

Corrective Action: Within 90 days of the date of this report, the CLRC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19130, subdivision (b), and California Code of Regulations, title 2, section 547.60, subdivision (a). Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Mandated Training

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

Additionally, new 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 CLRC’s mandated training program that was in effect during the compliance review period, July 1, 2019, through June 30, 2021.

SEVERITY: VERY SERIOUS	FINDING NO. 5 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS
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Summary: The CLRC did not provide ethics training to 2 of 12 existing filers. In addition, the CLRC did not provide ethics training to its one new filer within six months of appointment.

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

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

Cause: The CLRC states that two of its twelve filers were late in completing their biennial refresher course due to the closure of their office and disruption of their normal administrative processes for the entire year of 2021.

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

SEVERITY: VERY SERIOUS	FINDING NO. 6 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS
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Summary: The CLRC did not provide sexual harassment prevention training to its two existing supervisors every two years.

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

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

Cause: The CLRC states that their two supervisors were late in completing their biennial refresher course due to the closure of their office and disruption of their normal administrative processes for the entire year of 2021. Additionally, the CLRC had relied on in-person sexual harassment prevention training offered by the Office of Legislative

Counsel, however in-person gatherings were unlawful during the pandemic.

Corrective Action: Within 90 days of the date of this report, the CLRC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that all employees are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 rate³ 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, July 1, 2020, through June 30, 2021, the CLRC made two appointments. The CRU reviewed both of those appointments to determine if the CLRC applied salary regulations accurately, and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
CEA C, Chief Deputy Director	CEA	Permanent	Full Time	\$13,715
Attorney	Certification List	Permanent	Full Time	\$10,028

³ "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).

IN COMPLIANCE	FINDING NO. 7 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found no deficiencies in the salary determinations that were reviewed. The CRLC 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.

Hiring Above Minimum Requests

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

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

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁴ (Gov. Code, § 19836, subd. (b).)

⁴ 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.

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, 2020, through June 30, 2021, the CLRC authorized one HAM request. The CRU reviewed the authorized HAM request to determine if the CLRC correctly applied Government Code section 19836 and appropriately verified, approved, and documented the candidate’s extraordinary qualifications, which is listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Attorney	Certification List	New to State	\$5,756 - \$10,028	\$10,028

IN COMPLIANCE	FINDING NO. 8 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES
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The CRU found that the HAM request the CLRC made during the compliance review period satisfied civil service laws, Board rules, and CalHR policies and guidelines.

Leave

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, January 1, 2021, through March 31, 2021, the CLRC reported one unit comprised of nine 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
January 2021	100	9	9	0
February 2021	100	9	9	0
March 2021	100	9	9	0

SEVERITY: VERY SERIOUS	FINDING NO. 9	INCORRECTLY POSTED LEAVE USAGE AND/OR LEAVE CREDIT
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Summary: The CLRC did not correctly enter four of seven timesheets into the Leave Accounting System (LAS) during the January 2021, pay period. As a result, four employees retained their prior leave balance despite having used leave credits.

Criteria: Departments shall create a monthly internal audit process to verify that all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

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

Cause: The CLRC states that since they contract with the DGS for certain human resources services, including keying attendance and leave, they do not have direct control over posted leave usage and credits.

Corrective Action: Within 90 days of the date of this report, the CLRC 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 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.⁵ (Cal. Code Regs., tit. 2, § 599.608.) Full-time and fractional employees who work

⁵ 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.

less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs., tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs., tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees⁶ 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, April 1, 2020, through March 31, 2021, the CLRC had one employee with qualifying and non-qualifying pay period transactions. The CRU reviewed that transaction to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which is listed below:

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

IN COMPLIANCE	FINDING NO. 10	SERVICE AND LEAVE TRANSACTIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES
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The CRU determined that the CLRC ensured the employee with a non-qualifying pay period did not receive vacation/sick leave, annual leave, and/or state service accruals.

⁶ 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.

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.*)

SEVERITY: VERY SERIOUS	FINDING NO. 11 DEPARTMENT DOES NOT MAINTAIN A CURRENT WRITTEN NEPOTISM POLICY
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Summary: The CLRC does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Criteria: It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department 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.*)

Severity: Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit-based civil service. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: The CLRC states that they had relied on the general state nepotism policy and were unaware of the need for an agency-specific nepotism policy.

Corrective Action: Within 90 days of the date of this report, the CLRC must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

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.*)

SEVERITY: VERY SERIOUS	FINDING NO. 12	WORKERS' COMPENSATION POLICY WAS NOT PROVIDED TO NEW EMPLOYEE BY THE END OF FIRST PAY PERIOD
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Summary: The CLRC did not provide specific notice to their new employee to inform them of their rights and responsibilities under California's Workers' Compensation Law.

Criteria: Employers shall provide to every new employee 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 of Regs., tit. 8, § 9880.)

Severity: Very Serious. The department does not ensure that its employees are aware of policies and procedures concerning workers' compensation.

Cause: The CLRC states that they were unaware of this requirement.

Corrective Action: Within 90 days of the date of this report, the CLRC 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 8, section 9880. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 four permanent CLRC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies, and guidelines.

SEVERITY: SERIOUS	FINDING NO. 13 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES
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Summary: The CLRC did not provide annual performance appraisals to all four employees reviewed after the completion of the employee's probationary period.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve

calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

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

Cause: The CLRC states that they were unaware that performance evaluations were required annually.

Corrective Action: Within 90 days of the date of this report, the CLRC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The CLRC's response is attached as Attachment 1.

SPB REPLY

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

CALIFORNIA LAW REVISION COMMISSION

c/o UC DAVIS SCHOOL OF LAW
DAVIS, CA 95616
530-752-3626



April 4, 2022

Alton Ford
Policy & Compliance Review Division
State Personnel Board
801 Capitol Mall, Sacramento, CA 95814

Re: Compliance Review Report

Dear Mr. Ford:

I am writing to express my appreciation for your office's careful review and report regarding the Commission's personnel practices.

As your report acknowledges, the Commission is a very small agency that is not part of any other agency or department. At present, we have 8 employees, total. Of those positions, six are attorneys who perform the legal and policy work necessary to achieve our statutory mission. We have only two positions assigned exclusively to administrative work. Those two employees must perform every task involved in administering a state agency and must meet requirements that govern agencies of all sizes. This is challenging.

Because my staff does not include specialists in human resources, we contract with the Department of General Services to advise us on those matters. They also perform some tasks for us directly (e.g., the keying of attendance and leave information).

We regret that we failed to meet some requirements. The guidance provided by your review will be a great help in achieving full compliance.

A separate document states specific causes for the deficiencies that were found by your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Hebert".

Brian Hebert
Executive Director

CALIFORNIA LAW REVISION COMMISSION

c/o UC DAVIS SCHOOL OF LAW
DAVIS, CA 95616
530-752-3626



April 20, 2022

Alton Ford
Policy & Compliance Review Division
State Personnel Board
801 Capitol Mall, Sacramento, CA 95814

Re: Compliance Review Report: Specific Causes

This document provides “specific causes” for each of the deficiencies found in the Compliance Review Report.

Finding 2. Equal Employment Opportunity program has not been established.

This was the result of an incorrect assumption that EEO issues could be addressed on an ad hoc basis if they were ever to arise, through consultation with DGS-HR and CalHR. It was also assumed that a fully implemented EEO program would not be practicable in an agency comprised of eight employees. To remedy the deficiency, the Executive Director will consult with EEO experts and set up an appropriate program before the end of the Fiscal Year.

Because the Commission currently has only one manager, it is not possible to name a manager other than the Executive Director as the EEO Officer. However, the Commission is in the process of implementing a succession plan, which will result in the creation of a new subordinate supervisory position. The EEO Officer duties will be included in the duty statement for that position.

A Disability Rights Committee has been established.

Finding No. 3. Unions were not notified of personal service contracts.

Ordinarily, the Commission does not enter into personal service contracts. It did so in this case because of new requirements associated with the recently-created Committee on Revision of the Penal Code. The contracts involved were for the graphic design and proofreading of the Committee’s first reports. The Commission was not aware that such services could be provided by state personnel. In the future, before entering into such contracts, the Commission will determine which bargaining unit should be given notice.

Finding No. 4. Written justification was not provided for all personal services contracts.

This was a drafting error. The same justification was prepared for both of the personal service contracts that were reviewed. The justification was inadvertently omitted from one of them.

Finding No. 5. Ethics training was not provided for all filers.

The finding is overstated. Ethics training has been provided to all filers. Two of the Commission's 12 filers were late in completing their most recent biennial refresher course. This happened because of the closure of our office and disruption of our normal administrative processes for the entire year of 2021. Nonetheless, the Commission will institute an annual "recurring obligations" event to ensure that all refresher courses are completed as required.

Finding No. 6. Sexual harassment prevention training was not provided for all supervisors.

The finding is overstated. Sexual harassment prevention training has been provided to all supervisors. The Commission's two supervisor employees were simply late in completing their most recent biennial refresher course. This happened because of the closure of our office and disruption of our normal administrative processes for the entire year of 2021. In addition, the Commission has relied on in-person sexual harassment training offered by the Office of Legislative Counsel, because it is too small to support its own training program. In-person gatherings were unlawful during the pandemic. Nonetheless, the Commission will institute an annual "recurring obligations" event to ensure that all refresher courses are completed as required.

Finding No. 9. Incorrectly posted leave usage and/leave credit.

The Commission contracts with the Department of General Services to provide certain human resources services, including keying attendance and leave. We do not have direct control over this process. We periodically review the accuracy of leave balance data and request corrections as needed. This will be changed to a monthly process.

Finding No. 11. Department does not maintain a current written nepotism policy.

The Commission was unaware of the need for an agency-specific Nepotism policy. We had relied on the general state policy. The Commission has since

adopted its own agency-specific policy. It has been distributed to all staff and will be distributed annually.

Finding No. 12. Workers' Compensation Policy was not provided to new employee by the end of first pay period.

The Commission was unaware of the requirement. The Commission has implemented a procedure to ensure that this problem does not recur.

Finding No. 13. Performance appraisals were not provided to all employees.

The Commission was unaware that performance evaluations were required annually. The Commission will institute an annual "recurring obligations" event to ensure that annual evaluations are provided to all staff.