



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA NATIVE AMERICAN HERITAGE COMMISSION**

Compliance Review Unit  
State Personnel Board  
October 27, 2021

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## INTRODUCTION

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

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

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

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

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

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

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

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Native American Heritage Commission (NAHC) personnel practices in the areas of appointments, EEO, PSC's, compensation, 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
Equal Employment Opportunity	Very Serious	Equal Employment Opportunity Program Has Not been Established
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
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
Leave	In Compliance	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Area	Severity	Finding
Leave	In Compliance	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Very Serious	Department Does Not Maintain a Current Written Nepotism Policy
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

**BACKGROUND**

The NAHC created in statute in 1976 (Chapter 1332, Statutes of 1976), is a nine-member body whose members are appointed by the Governor. The NAHC identifies, catalogs, and protects Native American cultural resources, ancient places of special religious or social significance to Native Americans, and known ancient graves and cemeteries of Native Americans on private and public lands in California. The NAHC is also charged with ensuring California Native American tribes' accessibility to ancient Native American cultural resources on public lands, overseeing the treatment and disposition of inadvertently discovered Native American human remains and burial items, and administering the California Native American Graves Protection and Repatriation Act (CalNAGPRA), among many other powers and duties.

The California State Lands Commission (SLC) performs human resources operations for the NAHC.

**SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the NAHC's appointments, EEO program, PSC's, compensation, leave, and policy and processes<sup>1</sup>. The primary objective of the review was to determine if the NAHC's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit

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

Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The SLC, on behalf of the NAHC, did not conduct any examinations or permanent withhold actions during the compliance review period.

The SLC processes all appointments on behalf of the NAHC. A cross-section of the NAHC'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 SLC 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 SLC, on behalf of the NAHC, did not conduct any unlawful appointment investigations or make any additional appointments during the compliance review period.

The NAHC's appointments were also selected for review to ensure the SLC applied salary regulations accurately and correctly processed employees' compensation. The CRU examined the documentation that the SLC provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application.

During the compliance review period, the SLC, on behalf of the NAHC, did not issue or authorize hiring above minimum (HAM) requests, red circle rate requests, arduous pay, bilingual pay, monthly pay differentials, alternate range movements or out-of-class assignments.

The review of the NAHC'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 SLC executes PSC's on behalf of the NAHC, which were also reviewed.<sup>2</sup> It was beyond the scope of the compliance review to make conclusions as to whether the SLC's

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

justifications for the contracts were legally sufficient. The review was limited to whether the SLC's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU reviewed the SLC's monthly internal audit process to verify that the SLC, on behalf of the NAHC, 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 NAHC's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the NAHC employees who used Administrative Time Off (ATO) in order to ensure that the SLC appropriately administered ATO. Further, the CRU reviewed a selection of NAHC positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the NAHC did not have any employees with non-qualifying pay period transactions.

Moreover, the CRU reviewed the NAHC's policies and processes concerning nepotism, and performance appraisals. The SLC's policies and processes regarding workers' compensation, which are provided to the NAHC, were also reviewed. The review was limited to whether the NAHC's and SLC's policies and processes adhered to procedural requirements.

On September 30, 2021, an exit conference was held with the NAHC to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the NAHC's written response on October 13, 2021, 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, May 1, 2020, through April 30, 2021, the SLC made six appointments on behalf of the NAHC. The CRU reviewed four of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Legal Analyst	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Attorney III	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 1 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED</b>
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**Summary:** The NAHC did not provide three probationary reports of performance for two of the four appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Office Technician (Typing)	Certification List	1	2
Attorney III	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 NAHC states that staff shortages and failure to adhere to required deadlines led to two probationary reports of performance being untimely or not provided.

**Corrective Action:** Within 90 days of the date of this report, the NAHC must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19172. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 2</b>	<b>EQUAL EMPLOYMENT OPPORTUNITY PROGRAM HAS NOT BEEN ESTABLISHED</b>
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**Summary:** The NAHC failed to provide documentation demonstrating 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 Disability Advisory Committee (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.*)

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. 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 NAHC states that an EEO program was not established due to the lack of a dedicated staff member to oversee the program.

**Corrective Action:** The NAHC reports it has made some progress into achieving compliance in this area, including hiring a dedicated employee to track EEO complaints and establish a DAC. Within 90 days of the date of this report, the NAHC must submit to the SPB written documentation demonstrating the corrections the department has implemented 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.

## 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, May 1, 2020, through April 30, 2021, the SLC, on behalf of the NAHC, had two PSC's that were in effect. The CRU reviewed all of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Arizona State University	Contractor Services	07/2020 – 06/2022	\$250,000.00	Yes	Yes
Nuna Consulting Group, LLC	Facilitating Services	02/2021 – 06/2023	\$40,269.20	Yes	Yes

<b>IN COMPLIANCE</b>	<b>FINDING NO. 3 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS</b>
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The total dollar amount of all the PSC's reviewed was \$290,269.20. It was beyond the scope of the review to make conclusions as to whether SLC's justifications for the contract were legally sufficient. For all PSC's reviewed, the SLC, on behalf of the NAHC, provided

specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, SLC complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the NAHC PSC's complied with civil service laws and board rules.

### **Mandated Training**

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

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

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

The CRU reviewed the NAHC's mandated training program that was in effect during the compliance review period, May 1, 2019, through April 30, 2021.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 4 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** The NAHC did not provide ethics training to one of one existing filer. In addition, the NAHC did not provide ethics training to one of one new filer within six months of their appointment.

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

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

**Cause:** The NAHC did not have an effective process in place to monitor the completion of ethics training for filers.

**Corrective Action:** The NAHC indicates it has hired a dedicated employee to ensure that ethics training is provided as required. Within 90 days of this report, the NAHC must submit to the SPB written documentation which demonstrates the corrections the department has implemented to achieve conformity with Government Code section 11146.3.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 5 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS</b>
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**Summary:** The NAHC did not provide sexual harassment prevention training to one of one new supervisor within six months of their appointment. In addition, the NAHC did not provide sexual harassment prevention training to one of one existing supervisor 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 NAHC did not have a process in place to offer or track sexual harassment prevention training.

**Corrective Action:** The NAHC indicates it has hired a dedicated employee to ensure that sexual harassment prevention training is provided as required. Within 90 days of this report, the NAHC must submit to the SPB written documentation which demonstrates the corrections the department has implemented to achieve conformity with Government Code section 11146.3.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>3</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, May 1, 2020, through April 30, 2021, the SLC made six appointments on behalf of the NAHC. The CRU reviewed four of those appointments to determine if the SLC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

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<sup>3</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$6,446
Legal Analyst	Certification List	Permanent	Full Time	\$4,496
Office Technician (Typing)	Certification List	Permanent	Full Time	\$3,144
Attorney III	Transfer	Permanent	Full Time	\$11,504

<b>IN COMPLIANCE</b>	<b>FINDING NO. 6 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The SLC, on behalf of the NAHC, 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.

## Leave

### Positive Paid Employees

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

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>4</sup> worked and paid absences<sup>5</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189

<sup>4</sup> For example, two hours or ten hours count as one day.

<sup>5</sup> For example, vacation, sick leave, compensating time off, etc.

days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

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

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the NAHC had one positive paid employee whose hours were tracked. The CRU reviewed the positive paid appointment to ensure compliance with applicable laws, regulations, policies and guidelines, which is listed below:

Classification	Tenure	Time Frame	Time Worked
Associate Environmental Planner	Retired Annuitant	07/1/2019 – 06/30/2020	900 Hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 7 POSITIVE PAID EMPLOYEES' TRACKED HOURS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the positive paid employee reviewed during the compliance review period. The SLC, on behalf of the NAHC, 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, February 1, 2020, through January 31, 2021, the SLC placed two NAHC employees on ATO. The CRU reviewed all of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Staff Services Analyst (General)	01/4/2021- 01/5/2021	2 Days
Staff Services Analyst (General)	12/23/2020- 12/31/2020	9 Days

<b>IN COMPLIANCE</b>	<b>FINDING NO. 8 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The SLC, on behalf of the NAHC, 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, November 1, 2020, through January 31, 2021, the SLC, on behalf of the NAHC, reported 3 units comprised of 37 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
December 2020	001	12	12	0
January 2021	001	13	13	0

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 LEAVE AUDITING AND TIMEKEEPING COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU reviewed employee leave records from two different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The SLC, on behalf of the NAHC, kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

**Policy and Processes**

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. *(Ibid.)* Nepotism is defined as the practice of an employee using his or her influence or power to

aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 10 DEPARTMENT DOES NOT MAINTAIN A CURRENT WRITTEN NEPOTISM POLICY</b>
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**Summary:** The NAHC 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 NAHC states that they lacked a dedicated Human Resources Liaison during the period under review. The NAHC has since filled the position and is currently working on creating an anti-nepotism policy.

**Corrective Action:** Within 90 days of the date of this report, the NAHC 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.*)

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

<b>IN COMPLIANCE</b>	<b>FINDING NO. 11 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the SLC provides notice to NAHC employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. The SLC, on behalf of the NAHC, did not receive any workers' compensation claims during the review period.

## 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 three permanent NAHC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Associate Environmental Planner	06/21/2020
Associate Governmental Program Analyst	03/1/2020
Staff Services Manager I (Specialist)	04/23/2020

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 12 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The NAHC did not provide annual performance appraisals to all of three 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 appraised of work performance issues and/or goals in a systematic manner.

**Cause:** The NAHC states that they lacked a dedicated employee to track performance evaluations during the period under review. The NAHC has since filled the position and is currently working on updating mandated policies and procedures.

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

### **SPB REPLY**

Based upon the NAHC written response, the NAHC 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

Gavin Newsom, Governor

NATIVE AMERICAN HERITAGE COMMISSION

October 13, 2021

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*Luiseño*

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Suzanne Ambrose  
Executive Officer  
State Personnel Board  
801 Capital Mall  
Sacramento, CA 95814

**Re: State Personnel Board Compliance Review Finding**

Dear Ms. Ambrose,

The California State Personnel Board (SPB) Compliance Review Unit (CRU) conducted a Compliance Review of the Native American Heritage Commission (NAHC) pursuant to Article VII, Section 3, of the California Constitution, Government Code (GC) Section 18661, and GC Section 18502.

The NAHC reviewed the draft compliance review report dated September 17, 2021, as provided by the SPB and agrees with the findings. The following are the findings and the NAHC's response to each finding.

**FINDING NO. 1 – Probationary Evaluations Were Not Provided for all Appointments Reviewed-AGREE**

**Cause/Response:** Of the six appointments review, two probationary reports of performance were untimely or not provided due to staffing shortages or an unforeseen event. (e.g., the supervisor and/or employee did not receive notification and/or adhere to the required deadline.

The NAHC is implementing tracking controls to reduce or eliminate other errors in the future.

**FINDING NO. 2 – Equal Employment Opportunity Program Has Not been Established-AGREE**

**Cause/Response:** According to NAHC, EEO Officer and Anti-Discrimination Policy have not been established. Until recently, NAHC did not have a dedicated Human Resources administrative staff member. A Disability Advisory Committee has not yet been established.

The NAHC has since hired a dedicated Human Resources Liaison administrative staff member (HR Liaison). The HR Liaison tracks EEO Complaints and Quarterly Reports through CalHR's Discrimination Complaint Tracking and Monitoring Salesforce Database.

The designated HR Liaison has currently completed EEO Quarterly Reports for Jan- Mar 2021, April-Jun 2021, and Jul-Sept 2021. Since the finding, an Anti-Discrimination Policy Memorandum has been drafted for review, and an EEO New Employee Welcome Memorandum, for employee onboarding. Due to staffing shortage, The Disability Advisory Committee still has not yet been established at this time.

**FINDING NO. 3 – Ethics Training Was Not Provided for All Filers-AGREE**

**Cause/Response:** The NAHC did not offer ethics training to one of one existing filers. In addition, the NAHC did not provide ethics training to one of one new filer within six months of their appointment. The department does not ensure that its filers are aware of their official position and influence prohibitions.

The NAHC has since hired a dedicated HR Liaison. The HR Liaison is currently responsible for maintaining and tracking Ethics Training to be completed annually for new and existing employees required to file Form 700. Annual reminders will be sent out to staff to complete training as required by law.

**FINDING NO. 4 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors-AGREE**

**Cause/Response:** The NAHC did not provide sexual harassment prevention training to one new supervisor within six months of their appointment. In addition, the NAHC did not offer sexual harassment prevention training to one of one existing supervisor every two years.

The NAHC has since hired a dedicated HR Liaison. The HR Liaison is currently responsible for maintaining and tracking all training schedules, including Sexual harassment Prevention for all staff employees. Bi-annual reminders will be sent out to staff to complete training as required by law.

**FINDING NO. 5 – Department Does Not Maintain a Current Written Nepotism Policy-Corrected in Compliance**

**Cause/Response:** The NAHC does not maintain a current written nepotism policy designed to prevent favoritism or bias in recruiting, hiring, or assigning employees. It is the policy of the State of California to recruit, hire and give all employees based on fitness and merit per 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. The department is committed to the state policy of recruiting, hiring, and assigning employees based on merit.

The NAHC has since hired a dedicated HR Liaison. The HR Liaison is currently working on creating and implementing mandated procedures and policy memorandums required by California.

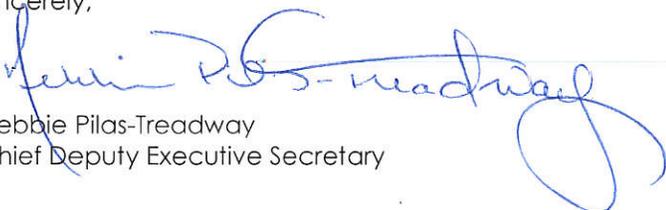
**FINDING NO. 6 – Performance Appraisals Were Not Provided to All Employees- AGREE**

**Cause/Response:** Performance appraisals were not provided to three employees out of 11 reviewed. The NAHC did not provide annual performance appraisals to three employees reviewed after completing the employee's probationary period.

Per NAHC, performance appraisals were not completed. No performance appraisals were provided for the 2020 calendar year. The NAHC has since hired an HR Liaison. The HR Liaison is currently working on creating and implementing mandated procedures and policies to reduce or eliminate other errors in the future.

If you have any questions or require further information, please contact me via email [debbie.treadway@nahc.ca.gov](mailto:debbie.treadway@nahc.ca.gov)

Sincerely,

  
Debbie Pilas-Treadway  
Chief Deputy Executive Secretary