



COMPLIANCE REVIEW REPORT

OFFICE OF TAX APPEALS

Compliance Review Unit
State Personnel Board
December 10, 2020

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INTRODUCTION

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

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

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

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

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the Office of Tax Appeals (OTA) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Those That Were Provided Were Untimely
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Incorrect Application of State Service and Leave Transactions

Area	Finding
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The OTA is an independent and impartial appeals body created by the Taxpayer Transparency and Fairness Act of 2017. The office was established to hear appeals from California taxpayers regarding various taxes and fees administered by the California Department of Tax and Fee Administration and the Franchise Tax Board. Tax disputes involving personal income, corporate franchise and income, sales and use, excise and other taxes and fees are decided by a three-member panel of Administrative Law Judges, each of whom is an expert in tax law. The office is independent of the state's tax agencies. Appeals are heard in Sacramento, Fresno, and Los Angeles.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the OTA's 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 OTA'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 OTA did not conduct any examinations or permanent withhold actions during the compliance review period.

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

A cross-section of the OTA'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 OTA 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 OTA did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the OTA did not make any additional appointments during the compliance review period.

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

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

The OTA'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 CEAs were provided sexual harassment prevention training within statutory timelines.

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.

The CRU reviewed the OTA's Leave Activity and Correction Certification forms to verify that the OTA created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the OTA'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 OTA'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. Further, the CRU reviewed a selection of the OTA's 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 OTA did not authorize Administrative Time Off (ATO).

Moreover, the CRU reviewed the OTA's policies and processes concerning nepotism and workers' compensation. The review was limited to whether the OTA's policies and processes adhered to procedural requirements. During the review period, the OTA did not have any employees due for a performance appraisal.

The OTA declined to hold an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the OTA's written response on December 4, 2020, 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, 2019, through April 30, 2020, the OTA made 50 appointments. The CRU reviewed 14 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Attorney V	Certification List	Permanent	Full Time	1
Administrative Law Judge III	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	1
Information Technology Specialist I	Certification List	Permanent	Full Time	1
Presiding Administrative Law Judge, Office Of Administrative Hearings	Certification List	Permanent	Full Time	1
Senior Legal Typist	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Administrative Law Judge III	Transfer	Permanent	Full Time	1
Associate Budget Analyst	Transfer	Permanent	Full Time	1
Tax Counsel III (Specialist)	Transfer	Permanent	Full Time	1
Tax Counsel IV	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Training and Development Assignment	Permanent	Full Time	1
Senior Legal Typist	Training and Development Assignment	Permanent	Full Time	1

FINDING NO. 1 – Probationary Evaluations Were Not Provided for all Appointments Reviewed and Those That Were Reviewed Were Untimely

Summary: The OTA did not provide 8 probationary reports of performance for 6 of the 14 appointments reviewed by the CRU. In addition, the OTA

did not provide one probationary report of performance in a timely manner, as reflected in the tables below.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Associate Governmental Program Analyst	Certification List	1	2
Attorney V	Certification List	1	1
Information Technology Associate	Certification List	1	1
Presiding Administrative Law Judge, Office of Administrative Hearings	Certification List	1	1
Staff Services Analyst (General)	Certification List	1	1
Associate Budget Analyst	Transfer	1	2

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Administrative Law Judge 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 OTA states that while its Human Resources Office adds reminders to the calendars of managers and supervisors to advise them when probationary reports are due, there was no follow up or accounting for probationary report completion.

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

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*)

In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

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).)

FINDING NO. 2 – Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the OTA's EEO program provided employees with information and guidance on the EEO process, including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the OTA. The OTA also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

Personal Services Contracts

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

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

During the period under review, May 1, 2019, through April 30, 2020, the OTA had 16 PSC's that were in effect. The CRU reviewed nine of those, which are listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification ?
Amerivet Logistics	Daily Mail Services	7/1/19 – 11/30/20	\$7,025	Yes	No
Bloomberg-BNA	License to Access Tax Libraries	1/22/20 – 1/21/21	\$70,400	Yes	No
California Reporting, LLC	Court Reporting Services	7/1/19 – 11/30/20	\$9,999.99	Yes	No
Ray Morgan Company	Copier Maintenance	12/1/19 – 11/30/21	\$8,046.89	Yes	No
Shaw Law Group, PC	EEO Investigative Services	11/19/19 – 6/30/20	\$25,000	Yes	No
Thomson Reuters (Tax & Accounting), Inc.	Checkpoint Digital Service Subscription	12/17/19 – 12/16/20	\$49,257	Yes	No
VSI Risk Management & Ergonomics, Inc.	Ergonomic Evaluations	2/25/20 – 6/30/20	\$4,000	Yes	No
West, A Thomson Reuters Business	Online Legal Database Subscription	1/1/20 – 12/31/20	\$136,500	Yes	No
Wind Dancer Moving Company	Office Moving and Installation Services	10/24/19 – 6/30/20	\$5,000	Yes	No

FINDING NO. 3 – Unions Were Not Notified of Personal Services Contract

Summary: The OTA did not notify unions prior to entering into all nine 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 work that their members could perform.

Cause: The OTA states that staffing changes in their Business Services Office and inadequate training of new staff led to PSC union notifications being unintentionally overlooked.

Corrective Action: It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. While the OTA provides new processes have been put in place to ensure union notification, within 90 days of the date of this report, the OTA must submit to the SPB a written response which addresses the corrections the department has implemented 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.

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 OTA's mandated training program that was in effect during the compliance review period, May 1, 2018, through April 30, 2020. The OTA's ethics and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 4 – Ethics Training Was Not Provided for All Filers

Summary: The OTA did not provide ethics training to 12 of 32 existing filers. In addition, the OTA did not provide ethics training to 14 of 22 new filers within 6 months of their appointment.

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

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

Cause: The OTA states that, although their Human Resources Office was sending out notifications to its filers to complete the ethics training, there was no follow up or accounting for training completion due to existing workload demands. The OTA further states that, as a new agency, its Administration Division was initially lacking personnel resources and staff were fulfilling multiple roles.

Corrective Action: Within 90 days of this report, the OTA must submit to the SPB a written corrective 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.

FINDING NO. 5 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The OTA provided sexual harassment prevention training to all of its existing supervisors every two years. However, the OTA did not provide sexual harassment prevention training to two of four new supervisors within six months of their appointment.

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, subd. (a).)

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 OTA states that its EEO Officer monitors and tracks all sexual harassment prevention training. The OTA further states that, although notifications were provided to the employees to complete the training, the EEO Officer was on a leave of absence prior to the two identified employees completing ethics training, thereby creating a lack of oversight.

Corrective Action: Within 90 days of the date of this report, the OTA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors 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, May 1, 2019, through April 30, 2020, the OTA made 50 appointments. The CRU reviewed nine of those appointments to determine if the OTA applied salary regulations accurately and correctly processed employees’ compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Administrative Law Judge III	Certification List	Permanent	Full Time	\$12,680
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,149
Attorney V	Certification List	Permanent	Full Time	\$14,053
Information Technology Specialist I	Certification List	Permanent	Full Time	\$6,395
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,281
Administrative Law Judge III	Transfer	Permanent	Full Time	\$12,078
Associate Budget Analyst	Transfer	Permanent	Full Time	\$6,446

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).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Tax Counsel III (Specialist)	Transfer	Permanent	Full Time	\$10,956
Tax Counsel IV	Transfer	Permanent	Full Time	\$13,421

FINDING NO. 6 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The OTA appropriately calculated and keyed the salaries for each appointment and correctly determined employees’ anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination

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

During the period under review, May 1, 2019, through April 30, 2020, the OTA made two alternate range movements within a classification. The CRU reviewed the two alternate range movements to determine if the OTA applied salary regulations accurately and correctly processed each employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Associate	C	D	Full Time	\$5,317
Staff Services Analyst (General)	A	B	Full Time	\$4,339

FINDING NO. 7 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: The CRU found the following error in the OTA’s determination of employee compensation:

Classification	Description of Finding(s)	Criteria
Information Technology Associate	Employee was moved to Range D of the classification before they met the criteria for movement resulting in the employee being overcompensated.	Alternate Range Criteria 483

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

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

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

Cause: The OTA acknowledges the transaction was keyed incorrectly and states it was the result of human error in miscalculating the range change date.

Corrective Action: Within 90 days of the date of this report, the OTA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that employees are compensated correctly. The OTA must establish an audit system to correct current compensation transactions as well as future transactions. The OTA states that the transaction has been corrected

and accounts receivables have been established to collect the overpayments. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Pay Differentials

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

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

During the period under review, May 1, 2019, through April 30, 2020, the OTA issued pay differentials⁴ to 32 employees. The CRU reviewed 12 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Administrative Law Judge I, Office of Administrative Hearings	National Judicial College Differential Pay	5%
Administrative Law Judge I, Office of Administrative Hearings	National Judicial College Differential Pay	5%

⁴ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Administrative Law Judge I, Office of Administrative Hearings	National Judicial College Differential Pay	5%
Administrative Law Judge II (Specialist), Office of Administrative Hearings	National Judicial College Differential Pay	5%
Administrative Law Judge II (Specialist), Office of Administrative Hearings	National Judicial College Differential Pay	5%
Administrative Law Judge II (Specialist), Office of Administrative Hearings	National Judicial College Differential Pay	5%
Administrative Law Judge III	National Judicial College Differential Pay	5%
Administrative Law Judge III	National Judicial College Differential Pay	5%
Administrative Law Judge III	National Judicial College Differential Pay	5%
Administrative Law Judge III	National Judicial College Differential Pay	5%
Presiding Administrative Law Judge, Office of Administrative Hearings	National Judicial College Differential Pay	5%
Presiding Administrative Law Judge, Office of Administrative Hearings	National Judicial College Differential Pay	5%

FINDING NO. 8 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the pay differentials that the OTA authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules 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 days⁵ worked and paid absences,⁶ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

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

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.

⁵ For example, two hours or ten hours counts as one day.

⁶ For example, vacation, sick leave, compensating time off, etc.

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

Classification	Tenure	Time Frame	Time Worked
Administrative Assistant II	Retired Annuitant	7/1/18 – 6/30/19	909 hours
Administrative Law Judge III	Retired Annuitant	7/1/18 – 6/30/19	482 hours
Administrative Law Judge III	Retired Annuitant	7/1/18 – 6/30/19	960 hours
Business Taxes Specialist III, Board of Equalization	Retired Annuitant	7/1/18 – 6/30/19	960 hours
Information Technology Manager II	Retired Annuitant	7/1/18 – 6/30/19	152.5 hours

FINDING NO. 9 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The OTA provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Leave Auditing and Timekeeping

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

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was

keyed into the leave accounting system. (*Ibid.*) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, October 31, 2019, through January 30, 2020, the OTA reported nine units comprised of 89 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
November 2019	100	8	8	0
December 2019	200	13	13	0
January 2020	503	9	9	0

FINDING NO. 10 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from three 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 OTA 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.

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.⁷ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees⁸ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, May 1, 2019, through April 30, 2020, the OTA had four employees with non-qualifying pay period transactions. The CRU reviewed nine transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	4
Qualifying Pay Period	Full Time	5

⁷ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 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.

⁸ As identified in Government Code sections 19858.3, subd. (a), 19858.3, subd. (b), or 19858.3, subd. (c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subd. (c), or California Code of Regulations, title 2, section 599.752, subd. (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

FINDING NO. 11 – Incorrect Application of State Service and Leave Transactions

Summary: The CRU found the following error in the OTA’s state service transactions:

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

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

Hourly or daily rate employees working in a state agency in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit.2, § 599.609.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

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

Cause: The OTA states that the employee's time for the month was miscalculated as a result of human error.

Corrective Action: Within 90 days of the date of this report, the OTA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure state service transactions are keyed accurately. The OTA states that it has corrected the employee's state service credit and leave accruals. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.*)

FINDING NO. 12 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the policy was disseminated to all staff and emphasized the OTA's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the OTA's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

FINDING NO. 13 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the OTA provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the OTA received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

DEPARTMENTAL RESPONSE

The OTA's response is attached as Attachment 1.

SPB REPLY

Based upon the OTA's written response, the OTA 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 correction actions specified must be submitted to the CRU.



SENT VIA E-MAIL

December 4, 2020

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

Re: Response to Final SPB Compliance Review

Dear Ms. Ambrose:

The Office of Tax Appeals (OTA) would like to thank the State Personnel Board's (SPB) Compliance Review Unit (CRU) for reviewing information and providing valuable feedback. OTA reviewed SPB's draft report. Overall, we find the report to be thorough and accurately summaries OTA's processes during the review period. We take our responsibilities seriously and are committed to correcting all deficiencies noted in the report and strive to comply with mandated requirements by adjusting our practices and procedures.

OTA is providing the following responses to the findings as presented by SPB.

FINDINGS NO. 1 Probationary Evaluations Were Not Provided for all Appointments Reviewed and Those That Were Reviewed Were Untimely

Cause: OTA acknowledges that we did not provide eight (8) probationary evaluations for six (6) employees and provided one (1) report late during this review period. While OTA's Human Resources Office adds reminders to the calendars of managers and supervisors to advise when probationary reports are due, they were not following-up or accounting for completion. Since going through this review process, OTA has put a process in place to ensure all report due dates are tracked and compliance is reviewed and followed up on a monthly basis.

FINDINGS NO. 3 Unions Were Not Notified of Personal Services Contracts

Cause: Due to staffing changes in OTA's Business Services Office and inadequate training of its new staff nine (9) union notifications were unintentionally overlooked. Since going through this review

process, OTA has hired a new manager over this section who has put contracting processes in place that will prevent these types of incidents from reoccurring.

FINDINGS NO. 4 Ethics Training Was Not Provided for All Filers

Cause: As a new agency, OTA's Administration Division was still lacking personnel resources and staff were fulfilling multiple roles in an attempt to monitor all of its areas of responsibility. While OTA's Human Resources Office was sending out notifications to its filers to complete the Ethics Training, they were not following-up or accounting for completion due their own workload demands. Since going through this review process, OTA has hired a Training Officer who is responsible for monitoring and tracking all mandatory training to ensure we are in compliance.

FINDINGS NO. 5 Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: OTA's Equal Employment Opportunity (EEO) Officer monitors and tracks all Sexual Harassment Prevention Training. While notifications were provided to the employees to complete the training, our EEO Officer went out on maternity leave prior to two (2) employee's completing their training, and there was no follow-up or accounting for the completion in her absence. Since going through this review process, OTA has hired a Training Officer, who in partnership with the EEO Officer, is responsible for monitoring and tracking Sexual Harassment Prevention Training to ensure we are in compliance.

FINDINGS NO. 7 Alternate Range Movement Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Cause: OTA acknowledges this transaction being keyed incorrectly. The cause was human error in miscalculating the range change date, which resulted in the employee receiving their range change earlier than they should have. The 335 transaction has been corrected and accounts receivables have been established to collect the overpayments.

FINDINGS NO. 11 Incorrect Application of State Service and Leave Transactions

Cause: Human error was the cause in miscalculating the employee's time for the month, which resulted in the employee not receiving state service credit and leave accruals for one month. OTA has since corrected the employee's state service credit and leave accruals.

Should you have any questions regarding this matter or would like to discuss further, please contact me via email at jeanna.wimberly@ota.ca.gov or by phone at (916) 206-3720.

Sincerely,



Jeanna Wimberly
Deputy Director, Administration

cc: Theria Martin, Chief Deputy Director
 Linda Newson, HR Supervisor

The Corrective Action Response (CAR) is an opportunity for departments to demonstrate necessary steps have been implemented to correct the non-compliant Findings (deficiency) found as a result of the Compliance Review.

For each non-compliant Finding, refer to the Corrective Action section of that Finding in the review report. Copies of relevant documentation demonstrating that the Corrective Action has been or is in the process of being corrected must be included with the CAR. Examples include, but are not limited to, updated internal policies or procedures (should be included for most findings), a training log for mandated training, and/or any new or updated forms, plans, or documents that have been implemented.

CORRECTIVE ACTION RESPONSE

DEPARTMENT: Office of Tax Appeals	BRANCH/DIVISION/PROGRAM: Administration Division – Human Resources and Business Services Offices
CONTACT PERSON (NAME AND TITLE): Jeanna Wimberly – Deputy Director, Administration	CORRECTIVE ACTION RESPONSE DATE: March 11, 2021

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation	Actual or Estimated Completion Date	Is a copy of the updated Policy or Procedure Included?
1 – Probationary Period Were Not Provided for All Appointments Reviewed and Those That Were Provided Were Untimely	Since the time of the Office of Tax Appeals (OTA) State Personnel Board (SPB) compliance review and its findings, we now have a HR resource responsible for following up and accounting for the completion of probationary reports.	February 1, 2021	Probationary Evaluation Procedures Included
3 – Unions Were Not Notified of Personnel Services Contract	Since the findings of the SPB compliance review, OTA has provided additional training to its designated contracts analyst, created “template” union notifications, and added another approver to the contract process to ensure adequate checks and balances are in place.	February 1, 2021	Union Notification Procedures Included
4 – Ethics Training Was Not Provided for All Filers	Since the findings of the SPB compliance review, OTA has hired a Training Officer who is responsible for following up and tracking all training, which includes the Ethics training.	January 1, 2021	Ethics Training Procedures Included

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)	POLICY/PROCEDURE
5 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors	Since the findings of the SPB compliance review, OTA has hired a Training Officer who is responsible for following up and tracking all training, which includes the Sexual Harassment Prevention training.	January 1, 2021	Sexual Harassment Prevention Training Procedures Included
7 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines	During the participation of SPB compliance review, OTA realized that peer and/or supervisory review was needed as a means of catching miscalculations and incorrect transaction codes before a transaction is keyed. We have since implemented this practice.	December 1, 2020	N/A
8 – Incorrect Application of State Services and Leave Transactions	During the participation of SPB compliance review, OTA realized that peer and/or supervisory review was needed as a means of catching miscalculations in leave accounting, as it relates to leave of absences (i.e., Pregnancy Disability Leave, Family Medical Leave Act, California Family Rights Act, etc.), to ensure qualifying pay periods were accurately applied. We have since implemented this practice.	December 1, 2020	N/A